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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 284.

THE CITIZENS TELEPHONE COMPANY, APPELLANT,

vs.

CHAMEL B. FULLER, AUDITOR GENERAL OF THE STATE OF MICHIGAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED MAY 8, 1913.

(23,657)

(22,657)

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INDEX.

	Original.	Print
Bill of complaint	1	1
Restraining order	22	12
Motion for restraining order	24	13
Restraining order and proof of service	25	14
Notice of motion for restraining order	27	16
Order continuing hearing	28	17
Demurrer	29	17
Subpœna and return	32	19
Order continuing hearing	34	20
Order continuing restraining order in force, &c	35	20
Opinion on demurrer	36	21
Order overruling demurrer, &c	39	23
Answer	40	23
Replication	44	26
Evidence (omitted in printing)	46	
Offers, &c (" " ")	47	
Assessment roll (" " ")	48	
Testimony of Crescent A. Parker (" " ")	53	
W. J. Berry (" " ")	56	
Charles E. Tarte (" " ")	129	
W. J. Melchers (" " ")	164	
W. J. Berry (recalled) (" " ")	182	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 5, 1912.

	Original.	Print
Exhibit A—Statement.....(omitted in printing)..	185	
Proceedings of September 16, 1910.. .(" ")..	199	
Testimony of W. J. Berry (recalled)...(" ")..	200	
Exhibit C—Statement.....(" ")..	205	
Testimony of Charles E. Tarte (recalled) (" ")..	244	
Exhibit D—Statement.....(" ")..	263	
Testimony of W. J. Melchers (recalled) (" ")..	267	
Exhibit E—Statement.....(" ")..	269	
Offers by defense.....(" ")..	279	
Testimony of Crescent A. Parker (recalled) (omitted in printing).....	279	
Proceedings of September 29, 1910.....(omitted in printing)..	284	
Testimony of W. J. Berry (recalled)...(" ")..	284	
Def't's Exhibit 1—Form of agreement (omitted in printing).....	284	
2—Form of agreement (omitted in printing).....	294	
3—Pamphlet.....(omitted in printing)..	298	
5—Form of contract(" ")..	303	
4—Form of contract(" ")..	304	
6—Form of contract(" ")..	315	
Testimony of C. E. Tarte (recalled)....(" ")..	322	
Wm. J. Melchers(recalled)(" ")..	336	
Def't's Exhibit 7—Certificate of Secretary of State (omitted in printing).....	343	
Testimony of Crescent A. Parker (recalled) (omitted in printing).....	346	
Def't's Exhibit 8—Compilation of special reports, &c. (omitted in printing).....	384	
Exhibit J—Form of report to board of assessors (omitted in printing).....	412	
Exhibit K—Form of annual report.....(omitted in printing)..	458	
Exhibit L—Form of annual report.....(" ")..	474	
Testimony of Henry A. Blum.....(" ")..	477	
Wm. M. Lawrence... ..(" ")..	510	
M. A. Porter.....(" ")..	536	
T. A. McCormick.....(" ")..	569	
M. A. Porter (recalled)..(" ")..	600	
Frank E. Belt.....(" ")..	611	
Lewis Brown.....(" ")..	624	
Gregory Burger.....(" ")..	636	
Wm. H. Pepper.....(" ")..	641	
L. B. Hittle.....(" ")..	650	
Wm. Robinson.....(" ")..	663	
Thomas Turner. .....(" ")..	674	
Fred Allington.....(" ")..	687	
D. W. Boss.....(" ")..	699	
Duncan White.....(" ")..	706	
H. E. McComb .....(" ")..	715	
W. Wiltse.....(" ")..	722	
R. H. Hitchcock.....(" ")..	731	
Felix Meister..... ....(" ")..	737	

	Original.	Print
Testimony of F. G. Barbee.....(omitted in printing)..	742	
Charles Mulnix.....(" ")..	765	
Thomas McCormick (recalled) (omitted in printing).....	773	
W. J. Berry (recalled)..(omitted in printing)..	780	
Crescent A. Parker (recalled) (omitted in printing).....	827	
Extracts from reports.....(omitted in printing)..	835	
Testimony of P. E. Hurson.....(" ")..	858	
A. W. Francis.....(" ")..	880	
J. J. McQuaid.....(" ")..	891	
Proceedings of November 10, 1910.....(" ")..	906	
Testimony of Crescent A. Parker (recalled) (omitted in printing).....	910	
Arthur H. Miller.....(omitted in printing)..	922	
Crescent A. Parker (recalled) (omitted in printing).....	936	
A. H. Miller (recalled)..(omitted in printing)..	937	
Wm. Herbert Cork.....(" ")..	941	
Crescent A. Parker (recalled) (omitted in printing).....	955	
W. J. Berry (recalled)...(omitted in printing)..	963	
Crescent A. Parker (recalled) (omitted in printing).....	972	
W. J. Berry (recalled)...(omitted in printing).	1015	
Final hearing.....	1026	27
Opinion.....	1027	27
Decree.....	1037	35
Order restoring injunctional order pending appeal.....	1038	35
Petition for appeal and allowance thereof.....	1039	36
Assignments of error.....	1041	37
Bond on appeal.....	1044	38
Citation and service.....	1046	39
Clerk's certificate.....	1048	41
Stipulation as to what shall constitute record.....	*a*	41
Evidence, &c.....	*b*	41
Admission as to property, &c.....	*b*	41
Assessment rolls.....	1	42
Testimony of Crescent A. Parker.....	6	50
Exhibit A—Tabulation of reports of assessed companies...	7	51
Exhibit B—Tabulation of reports of non-assessed companies.	13	57
Testimony of W. J. Berry.....	21	65
Lists of companies taxed for 1909.....	22	65
Def't's Exhibit 1—Form of contract.....	32	74
Def't's Exhibit 2—Form of roadway contract.....	34*a*	78
Form of terminal station contract.....	38*b*	83
Testimony of Charles E. Tarte.....	41	86
W. J. Melchers.....	46*a*	93
W. J. Berry (recalled).....	52	99
Charles E. Tarte (recalled).....	58	111
Exhibit D—List of non-taxed telephone companies.....	58	112
Testimony of W. J. Melchers (recalled).....	62	117
Exhibit E—Statement of cost of property, &c.....	63	118

	Original.	Print
Testimony of Crescent A. Parker (recalled)	65*a*	120
C. E. Tarte (recalled)	69	123
W. J. Melchers (recalled)	71	124
Crescent A. Parker (recalled)	72	125
Def't's Exhibit 8—Compilation of special reports received in 1910	75*b*	128
Testimony of Henry A. Blum	88	146
Wm. M. Lawrence	92	149
M. A. Porter	96	151
T. A. McCormick	102	155
M. A. Porter (recalled)	107	158
Frank A. Bell	109	159
Lewis Brown	111	160
Gregory Burger	113	161
Wm. H. Pepper	114	162
L. B. Hittle	115	163
Wm. Robinson	118	164
Thomas Turner	120	166
Fred Allington	123	167
D. W. Boss	125	168
Duncan White	126	169
H. E. McComb	127	170
W. Wiltse	128	170
R. H. Hitchcock	130	171
Felix Meister	131	172
F. G. Barbee	131	172
Charles Mulnix	134	174
Thomas McCormick (recalled)	136	175
W. J. Berry (recalled)	137	176
Extracts from M. S. T. Gazette, January, 1910	137	176
January, 1908	139*a*	177
February, 1908	140	179
March, 1908	142*b*	182
June, 1909	143	183
April, 1909	144*a*	186
Testimony of Crescent A. Parker (recalled)	149	190
P. E. Hurson	154	193
A. W. Francis	159	196
J. J. McQuaid	161	197
Crescent A. Parker (recalled)	163	199
Arthur H. Miller	165	201
Crescent A. Parker (recalled)	168	203
A. H. Miller (recalled)	168	203
Wm. H. Cork	168	203
Crescent A. Parker (recalled)	171	204
W. J. Berry (recalled)	173	206
Crescent A. Parker (recalled)	173	206
W. J. Berry (recalled)	180	210

1 Original.

No. 1696.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS TELEPHONE CO., Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

Bill of Complaint.

Kleinhans & Knappen, solicitors for complainant, 317 Mich. Trust Bldg., Grand Rapids, Mich.
Henry M. Campbell, of counsel.

2 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, — Division. In Equity.

CITIZENS TELEPHONE CO., Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

To the Honorable the Judges of the Circuit Court of the United States for the Western District of Michigan, Southern Division:

Your orator, Citizens Telephone Company, a corporation, brings this, its bill of complaint against Oramel B. Fuller, the duly elected, qualified and acting auditor general of the State of Michigan, a citizen of said State of Michigan, a resident of the Western District of said State, and defendant herein, and

3 Respectfully Shows and Alleges as Follows:

First. That your orator Citizens Telephone Company is and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Michigan, having its principal office or place of business in the City of Grand Rapids, Michigan. That your orator is, and always has been organized for the purpose of conducting, and has conducted, the business of furnishing to the public telephone service, under arrangements entered into between your orator and the various members of the public who avail themselves of your orator's services. That the business of your orator is conducted by telephone lines and other equipment and extends not

only to various points within the State of Michigan, but also connects with other telephone lines and systems outside of the State of Michigan, whereby telephone business of an interstate character, consisting of messages between points in the State of Michigan to points without the State of Michigan and from points without the State of Michigan to points within the State of Michigan, is carried on and transacted. That the business of your orator is a large and constantly increasing one and is of great value to your orator and to the public, whom your orator, as above stated, serves.

Second. That prior to the year 1909 your orator was taxed by the State of Michigan, under and by virtue of the terms of Act No. 179, of the Public Acts of the State of Michigan of the year 1899 whereby your orator paid to the State of Michigan a tax of three (3) per cent. on its gross receipts for the year in which the tax
4 was laid, which tax was, by the express terms of said act, laid and paid in lieu of all other taxes to the State of Michigan. That in the year 1909, at its regular session, the legislature of the State of Michigan passed a bill which purported to amend the title and sections 1, 4, 5, 6, 8, 9, 10, 13, 14, 18 and 21 of Act No. 282 of the Public Acts of 1905, which act of 1905 was a previous act of the legislature of the State of Michigan providing for an ad valorem assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies and fast freight line companies and for the levy of taxes thereon by a state board of assessors. That said Act No. 282 of Public Acts of 1905 did not in any way apply to telephone companies, which were and had been taxed under the act of 1899, hereinbefore referred to, providing for a specific tax upon the gross receipts of telephone companies. That said Act No. 49 of the Public Acts of the State of Michigan for the year 1909 attempted to include within its terms the taxation by the same state board of assessors of the property of telephone companies, as by reference to said act will more fully and at large appear.

Third. That the State Board of Assessors of the State of Michigan in the year 1910, at the regular session of said board, as provided for by said Act No. 49 of the year 1909, attempted to assess, and did assess the property of your orator at the amount of $2,300,000 and fixed the tax payable to the State of Michigan by your orator
5 for the year 1909 under the terms of said act, at the sum of $47,548.61. That under section 14 of said Act No. 49 of the year 1909 the taxes levied, under the terms of said act, become payable to the state treasurer of the State of Michigan on the first day of April following the assessment and levy thereof, and if not paid on or before the first day of May following shall be considered in default, and shall bear interest thereafter at the rate of one (1) per cent. per month, or any fraction thereof. It is further provided by said section 14 of said Act No. 49 of the year 1909, that the taxes so extended against the companies assessed or purported to be assessed under the terms of said act, shall become forthwith a debt from each of said companies to the State of Michigan and shall

constitute a lien upon all the property of said companies, real, personal and mixed, which lien shall take precedence of all demands, judgments, assignments by warranty deed or otherwise or decrees against said companies, which lien and debt may be enforced by seizure or sale of said property, or such portion thereof as may be necessary to satisfy the same, as in said act provided, and that it shall be the duty of said state board of assessors to annex to the tax roll made by it upon the completion thereof, a warrant signed by said state board, or a majority of them, commanding the auditor general of the State of Michigan, the defendant herein, to collect the several sums mentioned as taxed against the companies in said roll, and authorizing and commanding him, the said auditor general, defendant herein, in case any corporation, company or person named in the assessment roll shall neglect or refuse to pay its tax, to levy the same by distress and sale of the properties of said corporation, company or person, or such portion thereof as shall be
6 necessary to raise sufficient money to satisfy said tax and the expense of said sale, after giving the same notice of said sales as provided for in general laws of the State of Michigan for the sale of property seized for taxes and offered for sale. And said section further provides that said auditor general may bring an action in the name of the people of the State of Michigan, in any court of competent jurisdiction in the State of Michigan, or in any other state, for the enforcement of said lien, and upon recovery of judgment or decree therein, the same may be collected by execution, levy and sale, as in other cases upon judgment in courts of record.

That in pursuance of the provisions of said section a warrant was duly annexed to the assessment roll commanding the defendant, as auditor general, to collect said taxes, which warrant was duly delivered to said defendant, who now threatens to proceed thereunder and enforce the same against the property of your orator in the manner provided in section 14.

Fourth. That prior to the year 1909 the telephone companies within the said State of Michigan were taxed by said State only upon a percentage of their gross receipts as a specific tax, which tax was estimated and levied by officers of the State of Michigan other than said board of assessors, and the property of said telephone companies was in no wise subject to assessment or tax by said state board of assessors, nor did said state board of assessors have any jurisdiction to tax or attempt to tax the property of telephone companies. That said Act No. 49 of the Public Acts of the State of Michigan for the year 1909 attempted to amend the previous act of the State of Michigan of 1905, to-wit, Act No. 282, so as to include within the properties assessed and taxed by said state board of
7 assessors, the property of telephone companies, and attempted to give to said state board of assessors jurisdiction and authority to assess and tax the properties of telephone companies, which prior to the passage of said Act No. 49 of the Public Acts of 1909 had not been in any way subject to the taxing jurisdiction of said state board of assessors.

That the provisions of said Act No. 49 of the Public Acts of 1909,

insofar as said act purports to affect telephone companies are as follows:

An act to amend the title and sections one, four, five, six, eight, nine, ten, thirteen, fourteen, eighteen and twenty-one of act number two hundred eighty-two of the public acts of nineteen hundred five, entitled "An act to provide for the assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies and fast freight line companies, and for the levy of taxes thereon by a state board of assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act."

The People of the State of Michigan enact:

SECTION 1. The title and sections one, four, five, six, eight, nine, ten, thirteen, fourteen, eighteen and twenty-one of act number two hundred eighty-two of the public acts of nineteen hundred five, entitled, "An act to provide for the assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock
8 car companies, refrigerator car companies and fast freight line companies, and for the levy of taxes thereon by a state board of assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act," are hereby amended to read as follows:

Title.

An act to provide for the assessment of the property by whomsoever owned, operated or conducted, of railroad companies, union station and depot companies, telegraph companies, telephone companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight companies, and all other companies owning, leasing, running or operating any freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State, and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act. * * *

SECTION 4. It shall be the duty of said board to make an annual assessment upon an assessment roll, to be prepared by said board, of the property, by whomsoever owned, operating or conducted, and having a situs in this State as hereinafter defined, of railroad companies, union station and depot companies, telegraph companies, telephone companies, sleeping car companies, express companies, car loading companies, stock car companies, refrigerator car
9 companies, and fast freight line companies, and all other companies owning, leasing, running or operating any freight,

stock, refrigerator or any other cars not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State: Provided, That the property of telegraph and telephone companies whose gross receipts within this State for the year ending June thirty do not exceed five hundred dollars shall be exempt from taxation. All telegraph and telephone companies doing business in this State shall make the report required by section six of this act to the State Board of Assessors: Provided, That such report for the year nineteen hundred nine shall be made and filed with said board on or before the first day of November, nineteen hundred nine.

SECTION 5. The term property, as used in this act, shall be deemed to include all property, real or personal, belonging to the persons, corporations, companies, co-partnerships and associations subject to taxation under this act, including the right of way, road bed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph and telephone poles, wires, conduits, switchboards, and all other property used in carrying on their business and owned by them respectively, and all other real and personal property, and all franchises—said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property: Provided, however, That this definition shall not include, apply to, or subject to taxation, such real estate as is owned and can
10 be conveyed by such persons, corporations, companies, co-partnerships and classifications under the laws of this State which is not actually occupied in the exercise of their franchises, or in use in the proper operation and conduct of their business; but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon as is other real estate in the several townships or municipalities in which the same may be situated. The term company, corporation, co-partnership, association, or person, wherever used in this act, shall apply to and be construed as referring respectively to any railroad company, union station and depot company, telegraph company, telephone company, sleeping car company, express company, car loaning company, stock car company, refrigerator or fast freight line company, and any other companies owning, leasing, running or operating any freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State; and to any firm, joint stock association, co-partnership, corporation, or other association or persons engaged in carrying on any business, the property of which is subject to taxation under this act. The term "property having a situs in this State" shall include all the property, real and personal, of the persons, corporations, companies, co-partnerships and associations enumerated in this act, owned, used and occupied by them
11 within the limits of this State, and also such proportion of their rolling stock, cars and other property as is used partly

within and partly without this State, as herein provided to be determined. * * *

SECTION 9. Subsequent to the filing of the reports required in the preceding sections, and prior to the fifteenth day of January in each year, it shall be the duty of the State Board of Assessors to prepare an assessment roll as provided in section four of this act, upon which they shall assess, at the true cash value, on the thirtieth day of June next preceding the time of making said assessment, all the property of the companies herein enumerated, subject to taxation under this act, which said assessment shall not be final until reviewed as hereinafter provided. For the purpose of arriving at the amount and character and true cash value of the property belonging to said companies as appearing upon the assessment roll for the purpose of assessment and taxation, the said board may personally inspect the property belonging to said companies, and may take into consideration the reports filed under this act, the reports and returns of said companies filed in the office of any officer of this State, and such other evidence or information as may be obtainable or possessed by said board, bearing thereon. * * *

In determining the true cash value of the property of each telegraph company and telephone company which owns, leases, operates or uses lines partly within and partly without this State, the said board shall be guided, in ascertaining the property subject to taxation in Michigan, by the proportion which the number
12 of miles of telegraph or telephone lines controlled or used by said company as owner, lessee or otherwise, within the State of Michigan, bears to the entire mileage of telegraph or telephone lines controlled or used by said company, as owner, lessee or otherwise, both within and without this State. * * *

SECTION 10. Upon said assessment roll, after the name of each of the companies assessed thereon, shall be placed a general description of the property of said companies, which shall be deemed to include all of the properties of said companies liable to taxation under this act. * * * In the case of telegraph and telephone companies, the following general description may be used: "Real estate, exchanges, switchboards, conduits, telegraph and telephone poles, and lines, and other appurtenances, and all other property used in carrying on the business of said company, and subject to taxation by a State Board of Assessors." * * *

That the subsequent provisions of said act relate to the collection of said tax as in paragraph three above cited.

Fifth. That Section 4 of said Act No. 49 of the Public Acts of the State of Michigan for 1909, above quoted, contains the proviso that property of telegraph and telephone companies whose gross receipts within the said State of Michigan for the year ending June 30th, preceding each and every assessment, do not exceed the sum of $500 shall be exempt from taxation by the said State of Michigan.

Your orator charges it to be a fact that there were at the time of the enactment of said Act No. 49 and now are many corporations,

companies and persons carrying on the telephone business
13 under the same conditions as those under which your orator transacts its business within the State of Michigan whose gross receipts for each year, and particularly whose gross receipts within the said State of Michigan for the year ending June 30th, 1909, do not and did not exceed the sum of $500; and that under and by virtue of said proviso in said Section 4 the properties of said telephone companies are exempt from all taxation.

Your orator, therefore, avers and charges that the exemption of said telephone companies whose gross receipts within the said State of Michigan do not and did not exceed the sum of $500 for the year ending June 30, 1909, is an unlawful, unreasonable and arbitrary discrimination against your orator, merely and solely because of the amount of business done by your orator; and that, therefore, the assessment and tax upon the property of your orator, under the terms of said act, is an arbitrary and unlawful exaction, and unless cancelled and restrained by this honorable court will deprive your orator of its property without due process of law and will deny to it the equal protection of the laws, in violation of Section 1 of Article XIV. of the Constitution of the United States and of Section 16 of Article II. of the Constitution of the State of Michigan. That said exemption is based upon no reasonable ground and affords no reasonable basis of classification, but is arbitrary and unlawful.

Sixth. Your orator further shows and charges it to be a fact that said Act No. 49 of the Public Acts of the State of Michigan for the year 1909, in so far as it attempts to include within its terms, or to subject to the taxing jurisdiction of the State Board of Assessors of
the State of Michigan, the property of telephone companies
14 is void and of no effect, under and by virtue of the provisions of the Constitution of the State of Michigan. That Section 21 of Article V. of the Constitution of the State of Michigan provides that no law shall embrace more than one object, which shall be expressed in its title. And your orator charges that the purpose of said provision is not only to inform the legislature, but the people of the State as well, of the character of pending legislation. That prior to the passage of said Act No. 49 of 1909 the properties of certain specified classes of corporations other than telephone and telegraph companies were taxed under the provisions of Act No. 282 of the Public Acts of the State of Michigan for the year 1905, as hereinbefore stated. That the title to said Act No. 49 of the year 1909 is as follows:

"An Act to amend the title and Sections 1, 4, 5, 6, 8, 9, 10, 13, 14, 18 and 21 of Act No. 282 of the Public Acts of 1905, entitled 'An Act to provide for the assessment of property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies and fast freight line companies and for the levy of taxes thereon by a State board of assessors and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act.'"

That an examination of the body of Act No. 49 of 1909 discloses

for the first time that said act purports to include within its terms, and to add to the classes of corporations to be assessed by said State Board of Assessors the property of telephone companies, corporations which engage in an entirely different business from the corporations theretofore assessed by and subject to the taxing jurisdiction of said State Board of Assessors, and which corporations were never before assessed by said State Board of Assessors. That said Act No. 49 of 1909 is an act amendatory merely of Act No. 282 of 1905, and there is nothing in the title of said Act No. 49 of 1909 to indicate in any way an intention of broadening the previous act or of conferring upon said State Board of Assessors the power of assessing or taxing new classes of corporations or business, and particularly telephone companies. That for this reason said Act No. 49 of 1909, in so far as it attempts or purports to subject to the taxing jurisdiction of the State Board of Assessors of Michigan the property of telephone companies is in direct violation of the Constitution of the State of Michigan, as above cited, void and of no effect. That, in consequence, the said State Board of Assessors had no jurisdiction to assess the property of your orator or to tax your orator on the basis of such assessment, or upon any basis; and the enforcement of said tax will deprive your orator of its property without due process of law and deny it the equal protection of the laws.

Seventh. That it is provided in and by said Act No. 49 of the Public Acts of the State of Michigan for the year 1909, aforesaid, as follows:

"The tax so extended against said companies shall become forthwith a debt from each of said companies to the State, and shall constitute a lien upon all the property of said companies, real, personal and mixed, which lien shall take precedence of all demands, judgments, assignments by warranty deed or otherwise, or decrees against said companies, which lien and debt may be enforced by seizure or sale of said property, or such portion thereof as may be necessary to satisfy the same, as hereinbefore provided."

That your orator is the owner of real estate situated in said State of Michigan, in the City of Grand Rapids, Kent County, and elsewhere and more particularly described as follows:

City of Grand Rapids, Kent Co.

All that parcel of land bounded on the west by Grand River which lies west of Block One (1), said parcel being full width of said Block, and all that parcel bounded on the west by Grand River which lies west of the west line of Block One (1) produced southerly to south boundary line of Pike St. and produced northerly to center line of Louis St. (except all plaster rock there may be lying west of present dock line and at depth of more than forty (40) feet from the present surface of said premises, and right to mine and take away said rock, the work to be done so as not to disturb the surface of said premises, and also except the right to dredge river bed west of said dock line to such a depth as may be necessary to improve water power and for purposes of navigation.

City of Grand Rapids.

East Office: All of the south forty-three (43) feet in width front and rear of lot number three (3) of block number one (1) of Dunton's Addition to the City of Grand Rapids, Kent County, Michigan, according to the recorded plat thereof. Also the right-of-way over the north seven (7) feet of the west eighty-four and one-third (84 1/3) feet, of said lot number three (3) to be used as a joint driveway with lot number two (2), adjoining said above described land on the north.

City of Grand Rapids.

South Office: Lot thirty-one (31) except the strip of land six (6) feet wide off the west end used for alley purposes, of White and Cody's Addition to said City of Grand Rapids as per plat thereof on record in Kent County Register's office; also hereby conveying the right of ingress and egress to and from said lot over a strip of land twelve (12) feet wide west of and adjoining the premises hereby conveyed.

City of Grand Rapids.

Barn property: Lot two (2) of block two (2), and the east twelve (12) feet in width of lot number three (3) of lot number two (2), all in Gunnison's sub-division in the city of Grand Rapids, according to the recorded plat thereof, together with all fixtures and scales.

Ottawa County.

Holland: The north twenty-two (22) feet in width of lot number six (6) in block thirty-seven (37), in said city of Holland, also the west eight (8) feet in width of the north twenty-two (22) feet in width of lot number seven (7), in said block number thirty-seven (37) in said city of Holland. All according to recorded map of said city, formerly village, of Holland, on record in the office of the Register of Deeds for said Ottawa County.

Osceola Co.

Tustin: Commencing one hundred thirty-seven and one-fourth (137¼) feet more or less west of the northeast corner of lot number nine (9) in said village of Tustin, thence south along west line of land described to Garah D. Gegait forty-four (44) feet, thence west to east line of an alley, thence northerly along east line of said alley to the south line of Church St., thence east along South line of said Church St. to place of beginning.

Osceola Co.

Reed City: Lot number nine (9) in block number nine (9) according to the recorded plat thereof.

Kent County.

Rockford: Part of lots forty (4-) and two hundred forty-eight (248) of said village of Rockford, commencing at a point on the east line of Main St. in said village, one hundred twenty-two and sixty-four hundredths (122 64/100) feet south of the northwest corner of lot forty (40), thence east eighty (80) feet; thence north twenty-five and one-half (25½) feet, thence west eighty (80) feet,
16b thence south twenty-five and one-half (25½) feet along east line of Main St. to place of beginning.

Ingham County.

Lansing: Lot number ten (10) of block number ninety-six (96) of said city.

Ionia County.

Saranac: Commencing at the southwest corner of lot number thirty-seven (37) of the village of Saranac according to the recorded plat thereof, and running north on lot line sixty-nine (69) feet, thence east twenty-two (22) feet, thence south sixty-nine (69) feet to lot line, thence west on said line twenty-two (22) feet to the place of beginning, together with all rights and privileges thereto belonging, and subject to easement as to the use of the east wall of the building situate thereon heretofore granted.

That the value of said real estate exceeds the sum of two thousand dollars.

That the tax aforesaid has been extended upon said tax roll against the property of your orator; and that said defendant Fuller
17 claims that the tax so extended upon said tax roll against the property of your orator constitutes a debt, under the provisions of said Act No. 49, from your orator to the State of Michigan, and constitutes a lien upon the property of your orator, real, personal and mixed, within the State of Michigan, including the property specifically above described, having precedence over all demands, judgments, assignments by warranty deed or otherwise, or decrees against your orator and that said lien and debt may be by him, the said defendant, enforced by seizure and sale of said property, or such portions thereof as may be necessary to satisfy the same, at any time hereafter, or by bringing suit therefor. And your orator further shows that the said alleged lien constitutes, by the terms of said Act No. 49, a cloud upon the title of your orator to all of its said property, including its said lands and real estate and applies to every portion thereof; and that said defendant, unless restrained by this court, will proceed forthwith, as your orator is informed and believes, to enforce said alleged tax and said alleged lien against the property of your orator by distress and by seizure and sale of said property, thereby causing your orator irreparable injury; and your orator avers that there is no provision of law in the State of Michigan.

or otherwise, by virtue of which your orator might bring an action or institute proceedings against the State of Michigan to recover back moneys which it might pay or which might be collected from it for or on account of said alleged tax.

Eighth. Your orator further shows and alleges that the matter in dispute exceeds the sum of two thousand dollars ($2,000), exclusive of interest and costs; and that your orator has no remedy in the premises by statute or at common law, and can obtain relief only from a court of equity, and that the matter in dispute in this
18 suit and the questions of law arising therefrom arise under the constitution and laws of the United States.

Ninth. Your orator further shows that it is ready and willing to pay when due to said defendant the amount to become due from it under Act No. 179 of the Public Acts of the State of Michigan for the year 1899, as the only tax which in law or in equity is due from it to said State of Michigan; but that said defendant has refused and continues to refuse to accept the same in discharge of your orator's liability for taxes; and your orator is ready and willing to pay the said sum as taxes as this court may direct; and is further ready and willing to pay, and now offers to pay, or to secure the payment of all such sums as taxes to the State of Michigan, to the approval of this court, as the court may lawfully upon final hearing of this cause adjudge.

Wherefore your orator prays:

A. That said defendant may be required to answer this bill of complaint, but not under oath, his answer under oath being hereby expressly waived.

B. That said pretended assessment and tax so made as aforesaid by the said State Board of Assessors may be by the decree of this court adjudged to be wholly without jurisdiction, invalid, illegal and void, and that the same be cancelled and that the cloud cast upon the property of your orator by reason of said pretended assessment and tax and the lien thereby attempted to be created upon its property be removed.

C. That a restraining order be issued forthwith and a temporary injunction be granted pendente lite, and that a permanent injunction be awarded upon a final decree restraining the defendant and such person or persons as may succeed him in office, and his or their clerks, agents, and assistants from proceeding in any manner,
19 under color of the authority assumed to be given by said Act No. 49 of the Public Acts of the State of Michigan for the year 1909 against your orator or its property, and from collecting or attempting to collect from your orator any part of the money asserted by the defendant, as alleged in this bill, to be due from your orator to the State of Michigan, or any part of the taxes mentioned in this bill until the further order of this court.

D. That process in proper form may issue from this honorable court requiring the said defendant to appear and answer this complaint, and to stand to and abide by any decree that may be rendered herein.

E. That your orator may have such other or further relief in the

premises as to this court may seem just.

And your orator will ever pray.

CITIZENS TELEPHONE COMPANY.
By C. F. ROOD, *President.*

KLEINHANS & KNAPPEN,
Solicitors.

Business address: 317 Mich. Trust Bldg., Grand Rapids, Mich.

HENRY M. CAMPBELL,
Of Counsel.

Business address: Union Trust Bldg., Detroit, Mich.

20 STATE OF MICHIGAN,
County of Kent, ss:

Charles F. Rood, being duly sworn deposes and says that he is the president of the Citizens Telephone Company; that he has read said bill of complaint by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

C. F. ROOD.

Subscribed and sworn to before me this 10th day of May, 1910.

DORA B. PARKER. [NOTARIAL SEAL.]
Notary Public, Kent County, Michigan.

My commission expires Feb. 15, 1914.

21 [Endorsed:] United States of America. Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity. Citizens Telephone Co., Complainant, vs. Oramel B. Fuller, Auditor General of the State of Michigan, Defendant. Bill of Complaint. Kleinhans & Knappen, Solicitors for Complainant. Henry M. Campbell, of Counsel. Filed May 10, 1910, at 2:15 P. M. Chas. L. Fitch, Clerk.

22 March Term, A. D. 1910, Thursday, May 12, 1910.

The Court met pursuant to adjournment.
Present: The Honorable Henry H. Swan, District Judge.

No. 1696.

CITIZENS' TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

On reading and filing the bill of complaint of Citizens' Telephone Company against Oramel B. Fuller, Auditor General of the State

of Michigan, praying, among other things, that the said defendant, Oramel B. Fuller, and such person or persons as may succeed him in office, and his or their clerks, agents and assistants, be restrained from proceeding, in any manner, under color of the authority assumed to be given by Act No. 49 of the Public Acts of the State of Michigan for the year 1909, and from collecting from said complainant herein the several sums of money demanded by the said defendant from said complainant herein, as set forth in the said bill of complaint, or any part thereof, until the further order of the Court, and

Upon motion of Kleinhans & Knappen, solicitors for said complainant, it is ordered that the said defendant, Oramel B. Fuller, and such person or persons as may succeed him in office, and his and their clerks, agents and assistants, wholly desist and refrain from proceeding in any manner under color of the authority assumed to be given by said Act No. 49 of the Public Acts of the State of Michigan of 1909, and from collecting or attempting to collect from said complainant any part of the moneys asserted by the said defendant, as alleged in the said bill, to be due from the said complainant to the State of Michigan, or any part of the taxes mentioned in said bill, and attempted to be levied upon the property of said complainant under said Public Act No. 49 of the year 1909, until the determination of the motion for a temporary injunction at this time made, and until the further order of the Court.

And it is further ordered that said motion for a temporary injunction be heard upon Thursday, May 19th, 1910, at 9:30 A. M.
23 at U. S. Circuit Court Rooms, Grand Rapids, and that a copy of the bill of complaint, of said motion and of this order be served upon the defendant five days before the time fixed for hearing of said motion.

24 Original.

No. 1696.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS' TELEPHONE CO., Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

Motion for Injunction and Restraining Order and Notice.

Kleinhans & Knappen, Solicitors for Complainant.
Henry M. Campbell, of Counsel.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

No. 1696.

CITIZENS' TELEPHONE CO., Complainant,

v.

ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

And now comes the Citizens' Telephone Company, the complainant in the above entitled cause, and moves this honorable court that a temporary injunction issue from this court directed to Oramel B. Fuller, Auditor-General of the State of Michigan, defendant in this cause, as prayed for in the bill of complaint filed herein, and that pending the hearing of this motion an order may be made by this court restraining said defendant from in any way proceeding to collect or attempting to collect the taxes alleged to be due from said complainant to said State of Michigan, as set forth in said bill of complaint. This motion is based upon the files and records of this cause.

Dated May 10, A. D. 1910.

KLEINHANS & KNAPPEN,
Solicitors for Complainant.

HENRY M. CAMPBELL,
Of Counsel.

Filed May 10, 1910.
CHAS. L. FITCH, *Clerk.*

25 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

At a Session of the Circuit Court of the United States for the Western District of Michigan, Southern Division, in Equity, Continued and Held at the City of Grand Rapids, on the 12th Day of May, in the Year of Our Lord One Thousand Nine Hundred and Ten, and of the Independence of the United States the One Hundred and Thirty-fourth.

Present: The Honorable Henry H. Swan, District Judge by designation.

Among the proceedings then and there had were the following, to-wit:

No. 1696.

CITIZENS TELEPHONE CO., Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

On reading and filing the bill of complaint of Citizens Telephone Company against Oramel B. Fuller, Auditor General of the State of Michigan, praying, among other things, that the said defendant, Oramel B. Fuller, and such person or persons as may succeed him in office, and his or their clerks, agents and assistants, be restrained from proceeding, in any manner, under color of the authority assumed to be given by Act No. 49 of the Public Acts of the State of Michigan for the year 1909, and from collecting from said complainant herein the several sums of money demanded by the said defendant from said complainant herein, as set forth in the said bill of complaint, or any part thereof, until the further order of the court, and

Upon motion of Kleinhans & Knappen, solicitors for said complainant, it is ordered that the said defendant, Oramel B. Fuller, and such person or persons as may succeed him in office, and his and their clerks, agents and assistants, wholly desist and refrain from proceeding in any manner under color of the authority assumed to be given by said Act No. 49 of the Public Acts of the State of Michigan of 1909, and from collecting, or attempting to collect from said complainant any part of the moneys asserted by the said de-
26 fendant, as alleged in the said bill, to be due from the said complainant to the State of Michigan, or any part of the taxes mentioned in said bill, and attempted to be levied upon the property of said complainant under said Public Act No. 49 of the year 1909, until the determination of the motion for a temporary injunction at this time made, and until the further order of the court.

And it is further ordered that said motion for a temporary injunction be heard upon Thursday, May 19th 1910, at 9:30 A. M. at U. S. Circuit Court Rooms, Grand Rapids, and that a copy of the bill of complaint, of said motion and of this order be served upon the defendant five days before the time fixed for hearing of said motion.

HENRY H. SWAN,
United States District Judge, Sitting by Designation.

STATE OF MICHIGAN,
County of Kent, ss:

Thomas A. McCarthy, being duly sworn, deposes and says, that on the 13th day of May, A. D. 1910, he served a certified copy of the foregoing Order to Show cause and Temporary Restraining Order on Oramel B. Fuller, Auditor General of the State of Michigan, at Lansing, Michigan, by personally delivering the same to the said Oramel B. Fuller, Auditor General, as aforesaid, together with a

true copy of the Motion for Injunction and Notice hereto attached; and that at the same time and place he personally delivered to the said Oramel B. Fuller, Auditor General, as aforesaid, a true copy of the bill of complaint filed in the cause in the annexed order.

THOMAS A. McCARTHY.

Subscribed and sworn to before me this 14th day of May A. D. 1910.

WM. K. CLUTE.
Notary Public, Kent Co., Michigan.

Com. Exp. Apr. 16, '14.

Filed May 14, 1910.
LEOLYN O. TENHOPEN,
Dep. Clerk.

27 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

No. —.

CITIZENS TELEPHONE CO., Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

To Hon. Oramel B. Fuller, Auditor General of the State of Michigan.

SIR: You will please take notice that upon the filing of the bill of complaint herein a motion for a temporary injunction in accordance with the prayer of the bill was duly entered.

You will further take notice that served upon you herewith are a copy of the bill of complaint herein filed, the motion for temporary injunction and certified copy of the order of said court fixing the time for hearing of said motion and restraining the defendant in said cause from in any way proceeding to attempt to collect said tax pending the hearing and decision of said motion for a temporary injunction.

Dated May 10, A. D. 1910.

KLEINHANS & KNAPPEN,
Solicitors for Complainant.

HENRY M. CAMPBELL,
Of Counsel.

[Endorsed:] United States of America. Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity. Citizens Telephone Co., Complainant, vs. Oramel B. Fuller, Auditor General of the State of Michigan, Defendant.

Motion for Injunction and Restraining Order and Notice. Kleinhans & Knappen, Solicitors for Complainant. Henry M. Campbell, Of Counsel.

28 March Term, A. D. 1910, Thursday, May 19, 1910.

The Court met pursuant to adjournment.
Present: The Honorable Arthur C. Denison, District Judge.

No. 1696.

CITIZENS' TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

This cause coming duly on for hearing upon the order to show cause heretofore entered herein, by consent in open Court of Jacob Kleinhans, Esq., of counsel for said complainant, and John E. Bird, Esq., of counsel for said defendant, it is ordered that such hearing upon said order to show cause be and hereby is continued to the tenth day of June, A. D. 1910.

29 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

No. 1696.

CITIZENS' TELEPHONE CO., Complainant,
vs.
ORAMEL B. FULLER, Defendant.

Filed May 31, 1910.

CHAS. L. FITCH, *Clerk.*

Demurrer.

Jno. E. Bird, for Defendant.

30 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS TELEPHONE CO., Complainant,
vs.
ORAMEL B. FULLER, Defendant.

This defendant, Oramel B. Fuller, (appearing without intent or purpose to represent or bind the State but with express purpose and

intention, not to submit the State to the jurisdiction of the court or to bind it by any decree which may be entered herein), by protestation, not confessing or acknowledging all or any of the matters or things, in the bill of complaint contained, to be true in the manner or form, as the same are therein set forth, demurs to the said bill, and for cause of demurrer shows:

(1) That the said complainant has not, in and by its said bill, made or stated such a case as entitles it, in a court of equity, or in this court, to any relief from or against this defendant, touching the matters contained therein.

(2) That the act complained of, and under which the assessments attacked in the bill, were made, is valid and constitutional.

(3) That no case within the jurisdiction of this court, is stated.

(4) That the said complainant is not entitled to maintain its said bill, in that it has full, complete and adequate remedy at law.

(5) That no injury to the complainant or to its property
31 by reason of the alleged defect in, or fault of, classification claimed in the bill, appears or is set forth therein.

Wherefore, this defendant demurs to the said bill and prays judgment whether he shall be compelled to make further or other answer thereto, and to be dismissed with his reasonable costs in this behalf sustained.

JNO. E. BIRD,
FRANZ KUHN,
ROGER I. WYKES,
GEORGE S. LAW,
Solicitors and of Counsel for Defendant.

In my opinion this demurrer is well founded in point of law, and proper to be filed in said cause.

ROGER I. WYKES,
Of Counsel for Defendant.

UNITED STATES OF AMERICA,
Eastern District of Michigan,
County of Ingham, ss:

Oramel B. Fuller, the defendant herein, upon oath says: that he has read the foregoing demurrer and that the same is not interposed for the purpose of delaying said suit or other proceedings therein.

ORAMEL B. FULLER.

Subscribed and sworn to before me this 28" day of May, 1910.

C. K. WOODHOUSE,
Notary Public, Ingham County, Mich.

My commission expires Feb. 25, 1913.

32 *Chancery Subpœna.*

THE UNITED STATES OF AMERICA,
Western District of Michigan,
Southern Division, ss:

The President of the United States of America to Oramel B. Fuller, Auditor General of the State of Michigan, Defendant, Greeting:

We command you, and every of you, that you appear before our Judges of our Circuit Court of the United States of America, for the Western District of Michigan, at Grand Rapids, in said District, on the first Monday in the Month of June next, to answer the bill of complaint of The Citizens Telephone Company, Complainant, this day filed in the Clerk's office of said Court, in said City of Grand Rapids, then and there to receive and abide by such judgment and decree, as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the Marshal of the Western District of Michigan to Execute.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Grand Rapids, aforesaid, this 10th day of May in the year of our Lord one thousand nine hundred and ten.

[Seal of the U. S. Circuit Court for the Western District of Michigan, Southern Division.]

CHARLES L. FITCH, *Clerk.*
By —— ——, *Deputy.*

Memorandum.

The within named defendant is notified that unless he enters his appearance in the Clerk's office of said Court, at Grand Rapids, aforesaid, on or before the day to which the within writ is returnable, the bill of complaint will be taken against him as confessed, and a decree entered accordingly.

CHARLES L. FITCH, *Clerk.*
By —— ——, *Deputy.*

33 [Endorsed:] Marshal's Docket No. 1036. No. 1696. Circuit Court of the United States, Western District of Michigan, Southern Division. Citizens Telephone Co., Complainant, vs. Oramel B. Fuller, Auditor General, Defendant. Chancery Subpœna. Returnable to rule day first Monday in June A. D. 1910. Filed June 6, A. D. 1910. Chas. L. Fitch, Clerk. Kleinhans & Knappen, Compl't's Sol'r. Henry M. Campbell, Of Counsel.

To the Marshal:

The Marshal will serve this Subpœna and Notice for a Writ of Injunction, personally, upon each of the defendants, or in case any of them cannot be found, then serve on such by leaving a copy thereof at the dwelling house or usual place of abode of such defendant, with some adult person who is a member or resident of the family, of suitable age and discretion.

——— ———, *Compl't's Sol'r.*

WESTERN DISTRICT OF MICHIGAN,
Northern Division, ss:

I Hereby Certify and return that after diligent search and inquiry I am unable to find Oramel B. Fuller, Defendant within named, or any member or resident of the family of the defendant herein named within my bailiwick.

FRANK W. WAIT,
U. S. Marshal.
By E. D. MOSHER, *Deputy.*

34 March Term, A. D. 1910, Friday, June 10, 1910.

The Court met pursuant to adjournment.
Present: The Honorable Arthur C. Denison, District Judge.

No. 1696.

CITIZENS' TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

By consent of counsel for the respective parties, it is ordered that the hearing upon the order to show cause herein be and hereby is continued until the eleventh day of June, instant, at 9:30 A. M.

35 March Term, A. D. 1910, Saturday, June 11, 1910.

The Court met pursuant to adjournment.
Present: The Honorable Arthur C. Denison, District Judge.

No. 1696.

CITIZENS' TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

This cause having come on for hearing on the bill and demurrer therein, and having been argued by counsel, and the Court not being prepared to decide the questions involved at the present time; it is ordered that the restraining order heretofore made herein be and it hereby is continued in force until the further order of the Court, on condition that the complainant, on or before July 1, 1910, pay to the Auditor General three per cent of its gross receipts for the year ending December 31, 1909; such payment to be without prejudice to the rights of the parties; and if it shall be held that the tax in controversy in this cause is valid, then such payment to apply thereon.

36 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE TELEPHONE TAX CASES.

The demurrers in these cases were orally argued, on June 11th, but counsel required further time for the submission of briefs, and such submission was not finished until after the commencement of the Marquette term, which has been in continuous session until within the last few days.

I have gone far enough into the examination of the main question involved to be satisfied that it ought not to be decided on demurrer. It is apparent that the legislation attacked did make a discrimination against the complainants and in favor of other telephone companies. The substantial question on which these cases will turn must be whether such discrimination was, as complainants claim "unreasonable and arbitrary", or whether it was, as the Attorney General claims, merely the exercise of a reasonable scheme of classification. Properly to determine this question, the court should be informed whether the property of the companies favored was trifling and inconsiderable as compared with the property of the companies taxed, or whether, on the other hand, the property exempted was of very large amount; and should also be informed what all the facts were which either justified or forbade the so-called classification. Not all the facts on this subject appear by the pleadings, in their present state, and any attempt to decide the meritorious question, while the record is in that condition, would be unfortunate. If, for example, it is true, as said on the argument, that the distinction made is really, when applied to the known facts, a distinction between co-operative companies and those organized for profit, that fact might or might not ultimately be thought important, but the case ought not to stand on a record not showing such fact.

37 It is said that the burden is on the complainants to show, by their bills of complaint, the absence of all things which could justify the discrimination, and that complainants' allegation that the discrimination was wholly arbitrary is only the statement of a conclusion, and that the bills are, therefore, fatally defective. If this was so, it would mean only that complainants should be permitted to amend; but it seems to me that, under the circumstances here existing, when the complainants allege that there was discrimination in fact in favor of "corporations, companies and persons carrying on the telephone business under the same conditions" as those under which complainants transact their business, and that such discrimination is arbitrary and "merely and solely because of the amount of the business done" and that the "exemption is based upon no reasonable ground and affords no reasonable basis of classification", they have stated sufficient facts, as distinguished from conclusions, to entitle them to make proof, if they can, that these facts are true.

The remedy at law, by payment and suit to recover, is not so adequate and complete as to bar relief in equity. The right to an injunction against the collection of a state tax, if imposed under an unconstitutional law, was recognized in the Michigan Railroad Tax Cases (138 Fed. Rep., 229; 201 U. S. 245). The alleged grounds of unconstitutionality, in the present case, are not so obvious, but are rather so far dependent upon a consideration of the facts and circumstances, that the decisions denying an injunction against a plainly unconstitutional tax do not apply.

The amount involved in each case is, at most, the amount of the tax imposed and about to be enforced. The right to tax, under another law, is conceded; the only complaint is that the state is proceeding under an invalid law, to collect a tax which exceeds the amount of the real and valid tax. There can be no presumption that if the law is unconstitutional, the state will proceed to enforce it in future years. I think the case calls for the application of the rule that jurisdiction is determined by the amount of the
38 tax, and not by the value of the property taxed. There are no special circumstances of injury or irreparable damage, as sometimes found. If this Court must hear a controversy over a tax of nineteen hundred dollars, it must hear one over nineteen dollars:

Walker v. Northeastern, 147 U. S., 370;
Fishback v. W. U. Tel. Co., 161 U. S., 96;
Ogden v. Armstrong, 168 U. S., 232;
Holt v. Indiana Co., 176 U. S., 72.

It follows that the demurrer must be sustained in the three cases where the tax is less than two thousand dollars (Nos. 1,698, 1,699 and 1,701) and overruled in the other four cases.

The injunctional order has been modified so that it requires complainants to pay the full tax assessable under the old law. With this modification, it should stand, in the four cases, until the hearing; but the matter is of much public importance, the proofs will be simple and short, and a final hearing can be had very speedily, if the state wishes. As a condition of maintaining the injunctional order, it will be directed that complainants file their replications immediately upon the filing of the answers, and that, thereupon, complainants take their prima facie proofs within fifteen days; that the state take its proofs within fifteen days thereafter; that the complainants take their proofs in reply within ten days thereafter, and that the case then stand for final hearing without notice; and it will be understood that such hearing will have precedence over the ordinary business of the court and of counsel.

Dated August 11th, 1910.

ARTHUR C. DENISON,
District Judge.

[Endorsed:] The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity. Citizens Telephone Co. vs. Auditor General and Six Other Telephone Tax cases. Opinion on Demurrer. Filed Aug. 11, 1910. Chas. L. Fitch, Clerk.

39 March Term, A. D. 1910, Thursday, August 11, 1910.

The Court met pursuant to adjournment.
Present: The Honorable Arthur C. Denison, District Judge.

No. 1696.

CITIZENS' TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

This cause having been heretofore duly argued and submitted by counsel for the respective parties upon the demurrer to said complainant's bill of complaint; after due consideration of the premises, it is ordered by the Court that the said demurrer be and the same hereby is overruled; and that the said defendant have leave to answer the said bill of complaint on or before the next rule day.

And it is further ordered that the restraining order heretofore made in this cause, as modified by the order entered herein June eleventh A. D. 1910, shall continue in full force and effect until the final hearing and determination of this cause, or until the further order of the Court in that behalf, provided that the complainant join in speeding the cause as follows, viz: upon the filing of the answer to said bill of complaint, said complainant shall forthwith file its replication thereto; thereupon the said complainant shall take its prima facie proofs within fifteen days after the filing of such replication; the said defendant shall take the testimony on its part within the next succeeding fifteen days; the complainant shall take its rebuttal proofs, if any, within the next succeeding ten days; and upon the expiration of said last named period, the proofs shall be closed, and without further order of the Court or notice by the parties, this case shall stand for immediate hearing upon pleadings and proofs.

40 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

Number 1696.

CITIZENS TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Defendant.

Answer.

The defendant Oramel B. Fuller, without purpose or intent to waive the demurrer heretofore interposed or to represent or bind

the State of Michigan or make it a party to this litigation, for answer to the bill of complaint heretofore filed herein, respectfully shows:—

1. That he admits the allegations of the first paragraph of said bill except that he has no knowledge or information that the complainant is the owner of an interstate line or does business of an interstate character, or that the business of the complainant is constantly increasing, and makes no admission with regard thereto.

2. That he admits the allegations of paragraph second of said bill to be substantially true as therein set forth.

3. That he admits the allegations of paragraph numbered third of said bill to be substantially true as therein set forth.

4. That he admits the allegations of paragraph fourth of said bill to be substantially true.

5. That he admits that as stated in paragraph fifth of said bill, that section four of Act No. 49 of the Public Acts of Michigan of 1909 contains the proviso that the property of the telegraph and telephone companies whose gross receipts within the State of Michigan for the year ending June 30th preceding each and every assessment do not exceed the sum of five hundred dollars, shall be exempt from taxation by the said State of Michigan, but that he is not clear as to whether the effect of the said proviso is to exempt such property of telegraph and telephone companies from all taxation, or whether the exemption is limited to taxation through and by the state board of assessors whose duties are fixed by said act No. 49 of the Public Acts of 1909.

That he denies the remainder of said paragraph fifth of said bill. That further answering said paragraph, this defendant says that the exemption of such telephone companies whose gross receipts within Michigan do not exceed the sum of five hundred
41 dollars for the year ending June 30th in each year is not an unlawful, unreasonable or arbitrary discrimination against the complainant or against other telephone companies whose gross annual earnings exceed the sum of five hundred dollars per year; but that the said exemption is reasonable and proper and valid and is based upon sufficient differences in principle which bear a just and reasonable relation to the purposes for which the classification is made.

6. That he denies the allegations of paragraph numbered sixth of said bill, except that he admits that Section 21 of Article V of the Michigan Constitution provides that no law shall embrace more than one object which shall be expressed in its title; and that the purpose of said provision is to inform both the Legislature and People of the State of the character of pending legislation and that prior to the passage of Act No. 49 of 1909, the property of certain specified classes of corporations other than telephone companies were taxed under the provisions of Act 282 of the Public Acts of 1905, and he admits that the title to said Act 49 of 1909 is correctly set forth in said paragraph of said bill.

7. That he admits the allegations of paragraph seventh of said bill, except that he has no knowledge of the location, description

or value of the real estate claimed to belong to the complainant and described therein, and makes no admission with regard thereto, but leaves the complainant to its proofs thereon; and that he denies that there is no provision of law in the State of Michigan or otherwise by virtue of which complainant might bring an action or institute proceedings against the State of Michigan to recover back moneys which it might pay or which might be collected from it for or on account of the said tax assessed against it; and avers that under the law of the State of Michigan, the said complainant has full, complete and adequate remedy at law by the payment of its tax under protest and the institution of a suit against the collecting officer to recover the amount paid.

8. That he admits that the value of the matter in dispute exceeds two thousand dollars, but denies the remaining allegations of paragraph numbered eight of said bill.

9. That he admits that complainant is ready and willing to pay the amount which has become due from it under Act 179
42 of the Public Acts of Michigan of 1899, and that the complainant has already paid the same and admits that this defendant has refused to accept and still continues to refuse to accept the same in full discharge of said complainant's liability for taxes. That as to whether said complainant is ready and willing to pay or secure the payment of any further tax, he has no knowledge or information and makes no admission with regard thereto.

10. This defendant further answering said bill avers that said Act No. 49 of the Public Acts of Michigan of 1909 and the action and proceedings of the State Board of Assessors thereunder and the assessment made and taxes levied pursuant thereto are in all respects valid and legal and constitutional, that the classification therein made of the companies whose property is taxed under, and those whose property is exempted from the operation of, the said act, is reasonable and proper and is based upon such differences in principle as bear a just and reasonable relation to the taxation of the property of telegraph and telephone companies, among which differences (there being no intent by this enumeration to limit claims of differences) are the following:

(*a*) That the property and operations of those telephone companies which are subject to taxation under the provisions of said act are radically different from those of the telephone companies exempted from the operations of the said act.

(*b*) That the property of those telephone companies subject to taxation under the provisions of said act is not employed in the same business in the same manner as is the property of those telephone companies exempted from the operations of said act.

11. That the purpose of all taxation is to produce a revenue; that the property of those telephone companies exempted from the operations of said Act 49 of 1909 was severally and in the aggregate of but inconsiderable value, the value of the property belonging to each company being very small and so small, as, if taxed at the average rate levied upon other property, not to produce a sufficient

return to pay the expense of making the assessment and collection of the tax.

Wherefore, this defendant, claiming the benefit of the points in its demurrer heretofore made, in addition to this answer,
43 prays that he may be dismissed with his reasonable costs and charges in this behalf sustained.

ORAMEL B. FULLER.

FRANZ C. KUHN,
ROGER I. WYKES,
GEO. S. LAW,
Solicitors for Defendant.

[Endorsed:] No. 1696. United States of America. Circuit Court of the United States for the Western District of Michigan, Southern Division. In Chancery. Citizens Telephone Company, Complainant, vs. Oramel B. Fuller, Defendant. Answer. Filed Aug. 22, 1910. Chas. L. Fitch, Clerk. Franz C. Kuhn, Roger I. Wykes, George S. Law, Solicitors for Defendant.

44 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

No. 1696.

CITIZENS TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Defendant.

This replicant, Citizens Telephone Company, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant Oramel B. Fuller, for replication thereunto saith that it doth and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

KLEINHANS & KNAPPEN,
Solicitors for Complainant.

HENRY M. CAMPBELL,
Of Counsel.

45–1025 [Endorsed:] No. 1696. U. S. Circuit Court. West. Dist. Mich. So. Div. In Equity. Citizens Telephone Co., Complainant, vs. Oramel B. Fuller, Defendant. Replication. Filed Aug. 22, 1910. Chas. L. Fitch, Clerk. Kleinhans & Knappen, Sol'rs for Complainant. Henry M. Campbell, Of Counsel.

1026 October Term, A. D. 1910. Thursday, December 29, 1910.

The Court met pursuant to adjournment.
Present: The Honorable Arthur C. Denison, District Judge.

No. 1696.

CITIZENS' TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

This cause coming duly on for hearing upon pleadings and proofs was argued and submitted by counsel for the respective parties, and thereupon the Court took this cause under advisement.

1027 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE MICHIGAN TELEPHONE TAX CASES.

For the Complainants:

Henry M. Campbell,
Jacob Kleinhans,
Leo M. Butzel.

For the Auditor General, defendant:

Franz Kuhn, Attorney General;
George S. Law, Assistant Attorney General;
Roger I. Wykes, Special Counsel.

Prior to 1901, Michigan railroad, telegraph and telephone companies were taxed specifically upon their earnings. These taxes were assessed and collected under various acts. That concerning telephone and telegraph companies was act 179 of 1899. It prescribed a tax of three per cent. of the gross receipts. In 1901, following political agitation on the subject, the legislature provided a plan for transferring railroads from the specific to the ad valorem basis. It created a State Board of Assessors, which was to assess the railroads' property at its true cash value, ascertain the average rate of taxes throughout the state and then levy this average rate against the amount of the assessment. The validity of this legislation was upheld in this court by Judge Wanty (Michigan Railroad

Tax Cases, 138 Fed. Rep., 223), and his decree was upheld by the Supreme Court (201 U. S., 245).

Thereafter, and by act 49 of 1909, telephone and telegraph companies were also transferred to the ad valorem basis, and put in the same class with railroad companies, subject to assessment by the State Board of Assessors. The act (§ 4) provided for the assessment "of the property by whomsoever owned, operated or conducted * * * of * * * telegraph companies, telephone companies, etc.," but carried the following proviso:

"Provided, that the property of telegraph and telephone companies whose gross receipts within this state for the year ending June 30th do not exceed five hundred dollars, shall be exempt from taxation."

Pursuant to this act, the State Board assessed the property
1028 of the four complainant companies at the aggregate sum of about $14,500,000.00, and levied thereon a total tax of about $300,000.00. A tax under the former three per cent specific basis would have been about $130,000.00 so that the new law effected a $170,000.00 increase. They filed their several bills against the Auditor General to prevent the enforcement of the new tax. A preliminary injunction was granted and continued, on condition that the companies pay the tax accruing under the old law so that only the excess would be affected by the injunction. With this condition, they have complied.

The bills allege that the proviso of § 4 causes discrimination and taking *or* property in violation of the "due process" and "equal protection" clauses of the fourteenth amendment to the federal constitution; and further allege that the act is invalid for deficiency of title under the Michigan constitution (Art. V., § 21).

Upon the argument of a demurrer, it was thought that some of the general terms of the bill, in its allegations of lack of cause for discrimination, might be sufficient to admit evidence operating to define these general terms, and the demurrer was overruled. Full proofs have now been taken and the following facts, which may bear upon the existence of forbidden discrimination, are established:

For the year ending June 30th, 1909, 659 corporations, individuals or associations made the required report. Of these, 224 showed receipts of more than $500 each, reported property said to have cost $35,000,000.00 and reported gross receipts of $7,600,000.00. The Board assessed this property at $21,000,000.00 and levied thereon a total tax of $433,000.00 (in place of the former specific tax, which would have been $228,000.00). Four hundred and thirty-five of the reports showed receipts of less than $500.00 each. Property belonging to the persons and companies so reporting was not assessed. The cost of this non-assessed property, at the average reported cost per telephone of all reporting companies, would be about $145,000.00; complainants' proof tends to show such cost to be about $250,000.00; $200,000.00 may fairly be assumed as such cost; and upon the comparative basis used with the larger corporations, this exempted property would have been assessed at $120,000.00. If we add an ample allowance for non-reporting, non-

taxable property, it still appears that the property which escaped taxation and which forms the basis of the complaint, is not more than one per cent. of the total.

1029 The great part of all the taxed property belonging to commercial corporations or enterprises organized and conducted for the purpose of earning and paying profits as or in the nature of dividends; substantially all that untaxed was the property of co-operative or farmers' mutual associations, usually unincorporated, conducted at estimated costs, and organized primarily to get for the associates cheap telephone service.

In the composition of the first or taxed class, there are exceptions to the description just stated, and there are to be found some conducted-at-cost enterprises. The proof does not show how many. If the extent of such enterprises is important in order to establish discriminations, then complainants' proof fails in this respect. It is, however, a safe assumption, from inspection of the list, that more than ninety-eight per cent of the property assessed represents commercial investments adapted and intended to earn interest or dividends.

In the composition of the second or exempt class, there are also exceptions to the stated formula. Out of the 435, there are 58 as to the character of which complainants raise this question. As to many of the 58, there is a lack of any substantial proof; as to some, classification on this basis is difficult, because they include elements characteristic of each class; but, excluding those which were new in 1909 and will be taxed in 1910, a conclusion that the property of the commercial investment class, which would escape taxation because of its small income, cost $75,000.00, resulting in an assessment valuation of $45,000.00, gives complainant the benefit of every doubt. This is less than one-fourth of one per cent. of the assessment.

These figures, compiled from the reports for the year ending June 30th, 1909, are subject to variations on account of property then not reported and so omitted, and also on account of property later devoted to such uses. Developments in the regular course of business and the research of parties brought to light, before the evidence closed, about 90 additional enterprises which had not reported. These do not materially vary the proportions given, and it is clear that the unobserved and undiscovered telephone systems must be almost wholly of the small, roadway class. There is no reason to suppose that the future, regular development of the business will change the existing proportions.

1030 There has been, for some years, a continuing absorption by the larger companies of the small ones, and it is a frequent occurrence for a co-operative, non-profitable-making-company, having gross annual earnings of less than $500.00, to sell its property to one of the larger companies having a large income. It follows, as an undoubted fact, that the identical property, devoted continuously to substantialy similar use, may, from year to year, shift between taxable and non-taxable class, solely on account of the ownership of the property.

DENISON, *District Judge* (after stating facts as above):

In the view I have taken of the controlling questions, it is not important to state in greater detail the questions of fact or of law that are presented by the record, or to make a more complete finding of facts.

The defendant insists that complainants have an adequate remedy at law. I think not. They own real estate. This tax constitutes a lien upon their real estate and a cloud thereon, and so they have a prima facie right to resort to a court of equity for the removal of the cloud. Even so, if they have another completely adequate remedy, by paying the tax under protest, and suing at law for its recovery, such prima facie jurisdiction might be destroyed. Although the state cannot, without statutory permission, be sued to recover a void tax, yet it is the settled rule of Michigan, that the collecting officer is personally liable for such tax, even though he has paid it into the state treasury (Bank vs. Watkins, 21 Mich., 488; Thompson vs. Detroit, 114 Mich., 502). To make such remedy "adequate" in this case, it must be assumed that judgments aggregating, for one year, $202,000.00 (and a much larger sum to accrue pending a final decision) could be collected from the individual who may be now filling some state office. I cannot indulge such an assumption, for the sake of defeating jurisdiction; but complainants may, if they wish, amend by alleging defendant's pecuniary irresponsibility for the amounts involved.

Defendant also insists that complainants suffer no harm from the alleged discrimination, and so have no equity to complain. This objection is taken because all the proceeds of this tax go, specifically, to the primary school fund, and do not operate, directly or indirectly, to reduce the tax burden of telephone companies; in other words, complainants' tax would not be a dollar less, if the total of property taxed in this class was twice as much as it is. The point is based upon the further ground that a complaint of this
1031 character should not receive consideration, unless it is made by some company which finds itself in the taxed class, when, upon the only sustainable basis of classification, it should be in the untaxed class. There is plausibility in this argument but it seems to lead to the conclusion that complainants must submit to any discrimination, no matter how arbitrary or how unjustifiable, if the discrimination does not increase their tax. The forbidden discrimination may be found as well in a bestowal of unfair favor as in the imposition of an unjust burden.

"Such equal protection is denied when, upon one of two parties engaged in the same kind of business and under the same conditions, burdens are cast which are not cast upon the other (Cotting v. Kansas City Stock Yards, 183 U. S., 79, 112).

In deciding whether state legislation transgresses constitutional limitations, it is to be remembered that an affirmative decision can be predicated only upon a case "so clearly and palpably a legal encroachment upon private rights as to leave no doubt that such taxation, by its necessary operation, is really spoilation under the guise of exercising the power to tax"; and that "all doubt as to the validity

of legislative enactments must be solved, if possible, in favor of the binding force of such enactments" (Henderson Bridge Co. v. Henderson City, 173 U. S., 592, 615). It must also be remembered that all arguments against the law because of its alleged unfairness and injustice were for the legislature; and no such argument can now be considered by this court, unless the injustice is so extreme as to impair a constitutional right.

It would not be profitable to review the Supreme Court decisions on the subject of classification; reference to this line of decisions will be found in the four most recent opinions, one in 216 U. S. (Southern Ry. v. Green, 400, 417) and three in 217 U. S. (Southwestern Oil Co. v. Texas, 114, 122; Standard Oil Co. v. Tennessee, 413, 420; and Brown-Forman Co. v. Kentucky, 563, 572). The clear rule is that classification is not arbitrary and invalid if it is "based upon some difference which bears a reasonable and just relation to the attempted classification" (Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 560).

Nor is it necessary to inquire whether, as defendant argues, the right is broader in matters of taxation than in matters of police power. It is at least as broad, and complainants cannot ob-
1032 ject if we accept the criteria established in the police power cases. Indeed, the underlying question seems to be the same (Brown-Forman Co. v. Kentucky, Supra, at page 571). Nor need we consider whether the small companies are wholly exempt from all taxation, or remain subject to specific taxes under the old law. When they are hereafter spoken of as exempt, it is intended to say that they are exempt at least under this act.

So, too, I think that a determination whether, when taxes are levied upon an ad valorem and not upon a specific basis, the amount of annual earnings, gross or net, may, of itself, constitute a sufficient basis for rendering property taxable or non-taxable, is not necessary, in a case where other distinctions exist which are more satisfactory than the mere amount of earnings.

Is there, then, in this case, any difference, beyond the respective earnings, between the property taxed and the property untaxed, which difference bears any reasonable relation to the classifying acts of the assessing board? Disregarding for the moment the exceptional instances, we find (1) that the property exempted is only a trifling portion of the whole; (2) that the cost of assessing and collecting in this class would be disproportionate to the amount which would be realized; (3) that this property is in the incipient or development stage, while the taxed property is in the fully developed form; (4) that the use of the untaxed property is predominantly private, while the use of the taxed property is correspondingly public; and (5) that the exempted property is used for the personal convenience and economy of the owners, while the taxed property represents commercial investments for profit-making purposes. It seems to me clear that these distinctions, and especially the last named, fully justify a classification resting on that basis, and justify taxing the public use profit-earning property, while exempting the private use, co-operative property (King v. Mullins, 171 U. S. 404, 435; Magoon v. Illinois Bank, 170 U. S., 283, 293; St. Louis,

etc., Co. v. Illinois, 185 U. S., 203, 207; Seaboard Air Line Ry. v. Seegers, 207 U. S., 73, 76).

Having so concluded that the legislature was entitled to reach and accomplish the result which it did accomplish in the
1033 matter of taxation exemption, the next question must be whether the result will be invalidated because the legislature may have assigned the wrong theory; that is to say, if the legislature is entitled, for any good reason, to exempt from general taxation a class of items, and such exemption results from the due administration of the statute as passed, is the exemption invalid because the legislature, in the statute, declares a non-maintainable reason for the exemption? This question, I am satisfied, should be answered in the negative.

"The validity of the tax can in no way be dependent upon the mode which the state may deem fit to adopt in fixing the amount which it will exact" (Home Ins. Co. v. N. Y., 134 U. S., 594, 600).

"The substance and not the shadow determines the validity of the exercise of the power" (Postal Tel. Co. v. Adams, 155 U. S. 688, 698.)

We are, then, necessarily led to the conclusion that this legislation, which might rightfully have created the resulting exemptions upon the ground that they favored private companies or non-profit-making companies, is not invalid because it describes these companies in terms of earnings instead of in terms of method and use.

This leaves, upon this branch of the case, only the question whether the attempted classification must fail because the declared basis of division will leave some instances of each class upon the wrong side of the line drawn under the true basis. It will tax some small portion of the co-operative companies and will exempt some small portion of the profit-making companies. This question is answered by the Supreme Court in M. J. & K. C. R. v. Turnipseed, (Dec. 19, 1910). In that case, it was contended that a classification between employees, which, in a general way, was a proper classification, was so formulated by the statute that it accomplished more than the underlying reasons of classification permitted, and exempted employees for whose exemption there was no lawful reason. Mr. Justice Lurton said:

"But this court has never so construed the limitation imposed by the fourteenth amendment upon the power of a state to legislate with reference to particular employments, as to render ineffectual a general classification resting upon obvious principles of public policy because it may happen that the classification includes persons not subject to a uniform degree of danger".

1034 Upon the same subject, the same court has already said: "In a classification for governmental purposes, there cannot be an exact exclusion or inclusion of persons and things" (Magoon v. Illinois Bank, 170 U. S., 283, 296);

and also:

"Exceptional and rare cases * * * may be imagined where * * * the people affected by the statute ought, in strictness, to

have been included in the exception. But we do not think the statute should be condemned on that account, etc." (Ozan Co. v. Union Bank, 207 U. S., 251, 256).

If this classification is to be sustained, for the reasons stated it becomes necessary to consider the force of certain incidents which undoubtedly do constitute, in some measure, a discrimination not justified by the adopted theory of classification. The first of these is found in the fact that the same property, continuously owned by the same persons, and devoted to the same use, will, from year to year, shift between the classes, as its earnings vary with reference to the $500.00 mark. This seems to indicate that taxation depends upon mere size; but this relation between size and taxation is really not determinative, but, rather is superficial and incidental. The amount of earnings furnishes a fairly accurate indication whether the company is beyond the incipient stage of profit-making. Mr. Justice Holmes has very recently said (Engel v. O'Malley, Jan. 3, 1911):

"It is true, no doubt, that where size is not an index * * * the law cannot discriminate between the great and the small. But in this case, size is an index."

The other of these incidents consists in the fact already stated that a mere change of ownership may accomplish a transfer from one class to the other. This result is logically inconsistent with any theoretically permissible classification; and, if it was the only element for consideration, it would demonstrate that the classification was invalid. In this case, however, it seems comparatively negligible and ought not to be permitted to control the situation. The amount of property so shifting from year to year is small and relatively trifling. True, complainants might segregate parts of their property into these small units, and so escape some taxation; but they have not done this, and to do so would, very likely, involve more expense than saving. Legislation is not necessarily invalid just because there is a loop-hole by which an occasional instance may escape an otherwise universal operation. Upon the whole, this incident must be taken as one of those imperfections likely to be found even in well arranged systems of taxation. As said by Mr. Justice Miller in State Railroad Tax Cases, 92 U. S., 575, 612, and repeated by Mr. Justice Brewer in Travelers' Ins. Co. v. Connecticut, 185 U. S., 364, 372:

1035

"Perfect equality and perfect uniformity of taxation, as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized."

It follows from these considerations, that the act of 1909 in question, does not deny to complainants the equal protection of the laws, nor does it take their property without due process of law.

The non-federal question presented by the record, and which must also be decided, is based upon the familiar provision of the Michigan constitution that an act shall embrace but one object which shall be expressed in its title. Omitting unimportant words, and paraphrasing somewhat, Act No. 173 of 1901 is entitled "An Act to provide for the assessment of the property of railroad companies

and express companies"; and the act now challenged, No. 49 of 1909, was entitled, "An Act to amend the title and certain sections of Act No. 173 of 1901, relating to the taxation of railroads and express companies". The purpose of the act of 1909 was to include telephone and telegraph companies with railroad and express companies, and this purpose was not, in so many words, expressed in the title.

The Michigan Supreme Court has construed and applied this constitutional provision in a large number of cases. Some of the earlier cases applied the limitation with great strictness, but the later tendency has been to hold that the title is sufficient if it fairly indicates the subject-matter and ought to put on notice those who may be interested in that subjete-matter. The exact question here presented has never been decided in Michigan, although it has been held that, in the title of an amending act, a mere reference to the number and general purpose of the act amended is sufficient; but this holding has been in cases where the purpose of the amend-
1036 ment was within the original title of the act:

Callahan v. Chipman, 59 Mich. 616;
Att'y Gen. v. Amos, 60 Mich. 375;
People v. Howard, 73 Mich. 14;
Sokup v. Van Dyke, 109 Mich. 681.

The practice employed in this instance has not been uncommon, and counsel have pointed out thirty instances during the last eight sessions where amending statutes have been thus entitled, and where the statute must fail if the present one is invalid.

The title of this act gave clear notice that there was to be made, in the original act, some change which necessitated changing its title, and this was, by necessary implication, notice that it was intended by the amendatory act to reach some kinds of property not named in the title to the original act, or else to withdraw some kind of property which was there named. We have, then a case where, by the original statute, certain public service corporations were subjected to a given system of taxation and where public notice was given that it was proposed to change the enumeration of corporations included under that system. I think that telephone and telegraph companies are not entitled to complain of any deficiency in this notice, and that it was sufficient to satisfy the theory of the constitution. It is a matter of public, political history that the extension of this taxing system, so as to include telephone and telegraph companies, had been the subject of a contest during the legislative session of 1907, at which the attempted extension failed, and that such extension was specially mentioned and urged in the Governor's message to the legislature of 1909. These well known facts make it improper to resort to any strained construction in order to find surprise or lack of notice.

Decrees may be entered dismissing the bills in the four cases.

Dated February 6th, 1911.

ARTHUR C. DENISON,
District Judge.

[Endorsed:] Nos. 1696, 7, 1700, 1702. The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity. Michigan Telephone Tax Cases. Opinion. Filed Feb. 3, 1911. Chas. L. Fitch, Clerk.

1037 March Term, A. D. 1911. Monday, March 27, 1911, two o'clock P. M.

The Court met pursuant to recess taken.

Present the Honorable Henry F. Severens, Circuit Judge, and the Honorable Arthur C. Denison and the Honorable Henry H. Swan, District Judges.

No. 1696.

CITIZENS' TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

This cause having been heretofore duly argued and submitted by counsel for the respective parties, and having been taken by the Court under advisement; and due deliberation having been thereupon had;

It is ordered, adjudged and decreed that the said complainant's said bill of complaint be and it hereby is dismissed; and it is further ordered adjudged and decreed that the said defendant do recover against the said complainant his costs in this cause, to be taxed; and that the said defendant have execution thereof.

1038 March Term, A. D. 1911. Monday, March 27, 1911, two o'clock P. M.

The Court met pursuant to recess taken.

Present the Honorable Henry F. Severens, Circuit Judge, and the Honorable Arthur C. Denison and the Honorable Henry H. Swan, District Judges.

No. 1696.

CITIZENS TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

A decree having been entered in this cause dismissing the bill of complaint therein, and a motion having been made by the complainant to continue the injunction in force pending an appeal to the Supreme Court of the United States, after hearing Mr. Jacob Kleinhans, of counsel for the complainant, and Mr. Roger I. Wykes, appearing as counsel for the Governor and Attorney General of the

State of Michigan, as well as for the defendant; and the District Judge who heard this case having called to his assistance, to hear and determine the application, the Honorable Henry F. Severens, Circuit Judge, and the Honorable Henry H. Swan, District Judge for the Eastern District of Michigan, and such application having been heard and being now determined by said three Judges sitting together;

It is ordered that the injunctional order heretofore made in this cause be and it hereby is restored and continued in force for the term of ten days from this date, and if in the meanwhile an appeal shall be taken by the Complainant, such injunction shall be continued in force until the appeal is heard and determined in the Supreme Court of the United States, or until the Supreme Court otherwise order; provided that the complainant shall execute a bond, with good and sufficient sureties, to be approved by one of the Judges of this Court, in the penal sum of Thirty-five thousand dollars, on the usual condition, and with the further condition that if the decree in this cause shall be affirmed, the complainant will pay the taxes assessed against it mentioned in the Bill of Complaint, which have not heretofore been paid, together with all interest and penalties thereon.

1039 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

The above named complainant, conceiving itself aggrieved by the decree made and entered on the 27th day of March 1911, in the above entitled cause, does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 1st day of April, 1911.

CITIZENS TELEPHONE COMPANY,
By KLEINHANS & KNAPPEN,
Solicitors.

The foregoing claim of appeal is allowed.
Dated 1st day of April, 1911.

ARTHUR C. DENISON,
U. S. District Judge.

1040 [Endorsed:] No. 1696. U. S. Circuit Court. West. Dist. Mich., So. Div. In Equity. Citizens Telephone Co., Complainant, vs. Oramel B. Fuller, Auditor General of the State of

Michigan, Defendant. Petition for Appeal and Allowance of Same. Filed Apr. 1, 1911. Chas. L. Fitch, Clerk. Kleinhans & Knappen, Sol'rs for Complainant.

1041 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

And now comes the above named complainant, by Kleinhans & Knappen, its solicitors herein, and says that the decree in said cause made and entered on the 27th day of March, 1911, dismissing the Bill of Complaint herein with costs, is erroneous, and against the just rights of the said complainant for the following reasons:

1. Because the Court erred in dismissing said Bill.

2. Because the decree should have granted the relief prayed for by the complainant in said Bill.

3. Because it should have been adjudged in and by said decree that the exemption from taxation of the property of telegraph and telephone companies whose gross receipts within the State of Michigan for the year ending June 30th did not exceed $500.00, as provided in Section 4 of Act No. 49 of the Public Acts of the State of Michigan for the year 1909, was invalid and unlawful and constituted an unjust discrimination against the complainant.

1042 4. Because it should have been adjudged in and by said decree that the assessment and tax upon the property of said complainant mentioned in said Bill of Complaint, under the terms of said Act No. 49, did deprive complainant of its property without due process of law, in contravention of Section 1 of Article XIV of the Constitution of the United States.

5. Because it should have been adjudged in and by said decree that said assessment and tax last mentioned did deprive complainant of its property without due process of law, in contravention of Section 16 of Article II of the Constitution of the State of Michigan.

6. Because it should have been adjudged in and by said decree that said assessment and tax last mentioned did deny to the complainant the equal protection of the laws, in contravention of Section 1 of Article XIV of the Constitution of the United States.

7. Because it should have been adjudged in and by said decree that said Section 4 of Act No. 49 was in contravention of the Constitution of the United States, especially of Section 1 of Article XIV.

8. Because it should have been adjudged in and by said decree that said Act No. 49 was in contravention of Section 21 of Article V of the Constitution of the State of Michigan, providing that no law

shall embrace more than one object, which shall be expressed in its title.

Wherefore the complainant prays that the decree of the said Circuit Court be reversed, and that said Court may be directed to enter a decree in accord with the prayer of the Bill.

CITIZENS TELEPHONE COMPANY,
By KLEINHANS & KNAPPEN,
Solicitors.

1043 [Endorsed:] No. 1696. U. S. Circuit Court, West. Dist. Mich., So. Div. In Equity. Citizens Telephone Co., Complainant, vs. Oramel B. Fuller, Auditor General of the State of Michigan, Defendant. Assignments of Error. Filed Apr. 1, 1911. Chas. L. Fitch, Clerk. Kleinhans & Knappen, Sol'rs for Complainant.

1044 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS' TELEPHONE COMPANY, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

Know all men by these presents, that we, Citizens' Telephone Company the above named complainant, a corporation organized under the laws of the State of Michigan, and having its principal place of business in the City of Grand Rapids in said State, as principal, and Charles F. Rood and Edward Fitzgerald, of said city of Grand Rapids, as sureties, are held and firmly bound unto the above named Oramel B. Fuller, Auditor General of the State of Michigan, in the sum of Thirty-five Thousand Dollars ($35,000.00) to be paid to the said Oramel B. Fuller, as Auditor General, as aforesaid, his successors or assigns, for the payment of which well and truly to be made we bind ourselves and each of us, and our and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the first day of April in the year of our Lord one thousand nine hundred and eleven.

Whereas, the above named Citizens' Telephone Company has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by said Circlit Court on the 27th day of March, 1911.

Now, therefore, the condition of this obligation is such that if the above named Citizens' Telephone Company shall prosecute said appeal to effect and answer all damages and costs if it fails to make said appeal good and shall pay the taxes assessed against it mentioned in the bill of complaint in this cause which have not heretofore been paid, together with all interest and penalties thereon, if

said decree shall be affirmed by the Supreme Court, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

CITIZENS' TELEPHONE COMPANY,
By CHARLES F. ROOD, *President.*

Attest:
E. B. FISHER, *Secretary.*

[Seal of the Citizens' Telephone Company.]

CHARLES F. ROOD. [L. S.]
EDWARD FITZGERALD. [L. S.]

1045 WESTERN DISTRICT OF MICHIGAN,
County of Kent, ss:

Charles F. Rood and Edward Fitzgerald, the sureties on the foregoing bond being each duly sworn, deposes and says, each for himself, that he is worth the sum of thirty-five Thousand Dollars ($35,000.00) over and above all debts and liabilities, in property situate in the state of Michigan subject to execution.

CHARLES F. ROOD.
EDWD. FITZGERALD.

Subscribed and sworn to before me this first day of April, 1911.
[NOTARIAL SEAL.] ARTHUR E. WELLS,
Notary Public, Kent Co., Mich.

My commission expires Apr. 9, 1914.

I approve the foregoing bond.
Dated April first, 1911.
ARTHUR C. DENISON,
United States District Judge.

[Endorsed:] No. 1696. U. S. Circuit Court. West. Dist. Mich., So. Div. In Equity. Citizens' Telephone Company, Complainant, vs. Oramel B. Fuller, Auditor General, etc., Defendant. Bond on Appeal. Filed Apr. 1, 1911. Chas. L. Fitch, Clerk.

1046 United States Supreme Court.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

To Oramel B. Fuller, Auditor General of the State of Michigan, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court, to be holden at the City of Washington, in the District of Columbia, on the first day of May next, pursuant to an order allowing an appeal filed in the

Clerk's office of the Circuit Court of the United States for the Western District of Michigan, Southern Division, in Equity, wherein The Citizens' Telephone Company is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appellant's assignments of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this first day of April, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States of America the one hundred and thirty-fifth.

ARTHUR C. DENISON,
U. S. District Judge.

Service of the foregoing citation is hereby acknowledged and accepted.

Dated April 4th 1911.

ROGER I. WYKES,
FRANZ C. KUHN,
GEORGE S. LAW,
Solicitors for Oramel B. Fuller.

1047 UNITED STATES OF AMERICA,
State of Michigan,
County of Kent, ss:

Stuart E. Knappen, being duly sworn, says that on April 4, 1911, he served upon Oramel B. Fuller, Auditor General of the State of Michigan, at his office in the Capitol in the City of Lansing, Michigan, the citation hereto attached, by showing the same to the said Oramel B. Fuller, and by delivering to him in person a copy thereof.

STUART E. KNAPPEN.

Subscribed and sworn to before me this 7th day of April, 1911.

[Seal Dora B. Parker, Notary Public, Kent Co., Mich.]

DORA B. PARKER,
Notary Public, Kent Co., Michigan.

My commission expires Feb. 15, 1914.

[Endorsed:] No. 1696. The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity. Citizens' Telephone Co., Compl't, vs. Oramel B. Fuller, Auditor General, Def't. Citation. Filed Apr. 18, 1911. Chas. L. Fitch, Clerk.

1048 UNITED STATES OF AMERICA,
Western District of Michigan,
Southern Division, ss:

I, Charles L. Fitch, Clerk of the United States Circuit Court for the Western District of Michigan, do hereby certify that the foregoing are true and compared copies of the bill of complaint, motion for injunction, demurrer, subpœna, opinion on demurrer, answer, replication, testimony, opinion on final hearing, and of the bond on appeal filed, and of the order to show cause, orders continuing hearing on order to show cause, order continuing restraining order in force, order overruling demurrer, final hearing, and decree, and the order restoring injunctional order pending appeal, entered in said cause, constituting a true copy of all the files and records and of the whole thereof, together with the original petition for appeal and allowance thereof, assignments of error and citation therein.

Witness my official signature and the seal of said Court at the City of Grand Rapids in said District and Division, this 27th day of April, A. D. 1911.

[Seal of the U. S. Circuit Court, Western District of Mich., Southern Division.]

CHARLES L. FITCH, *Clerk.*

a UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

CITIZENS' TELEPHONE COMPANY, Complainant and Appellant,

vs.

ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant and Appellee.

It is hereby stipulated that the annexed portions of the record, together with the pleadings filed, the opinions of the District Court filed in said cause, and the final decree therein, shall constitute the transcript of record on appeal in said cause.

Dated July 9th, 1912.

THOMAS P. BRADFIELD,
Solicitors for Complainant & Appellant.
KLEINHANS & KNAPPEN,
Of Counsel.
FRANZ C. KUHN, *Att'y General,*
ROGER I. WYKES,
Solicitors for Defendant & Appellee.

b Mr. WYKES: We admit that each of the complainants possess- real property in Michigan valued at at least $2,000. Is that what you want?

Mr. CAMPBELL: Within the jurisdiction of the Court, that is in the Western District.

Mr. WYKES: I don't know that the Companies are.

Mr. CAMPBELL: The Michigan, and the Union, and the Citizens, that is all. No question about the proposition.

Mr. LAW: Where is the Union, at St. Johns?

Mr. LYON: St. Johns, and Owosso, and Alma.

The name, assessed value, and amount of taxes for 1909, for each telephone company assessed is as follows:

1 Name of company.	Value as assessed.	Value as reviewed.	Taxes.
Adams, Carl J.	$1,850	$1,850	$38.25
Adamsville Telephone Union	3,050	3,000	62.02
Addison Telephone Exchange	800	800	16.54
Adrian Telephone Company	50,000	42,000	868.28
Alamo Mutual Telephone Company	1,500	1,500	31.01
Alcona County Telephone Company	2,550	2,550	52.72
Aldrich, A. A. and Son	1,350	1,350	27.91
Allen Mutual Telephone Company	1,950	1,950	40.31
Almont Telephone Company	4,000	3,500	72.36
Alpena Mutual Benefit Telephone Company	30,000	30,000	620.20
American Telephone and Telegraph Company of Michigan	400,000	450,000	9,302.99
American District Telegraph Company of Detroit	10,000	10,000	206.73
American District Telegraph Company of Michigan, Limited	10,000	7,500	155.05
Arbela Mutual Telephone Company	5,000	4,500	93.03
Arenac Telephone Company	3,850	3,850	79.59
Augusta Co-operative Telephone Company	1,100	1,100	22.74
Aurelius and Vevay Telephone Company	1,500	1,200	24.81
Bad Axe Telephone Company	4,500	4,500	93.03
Bainbridge Telephone Company	3,200	3,000	62.02
Ball, Mrs. Edwin	850	850	17.57
Baraga County Telephone Company	2,500	2,500	51.68
Beaverton Telephone Company	700	700	14.47
Benzie County Telephone Company	30,000	27,000	558.18
Billings Telephone Company	2,200	2,000	41.35
Birch Lake Telephone Company	6,000	5,000	103.37
Blanchard Telephone Company	3,950	3,500	72.36
Blissfield Telephone Company	18,000	16,000	330.77
Bloomingdale Telephone Company	900	900	18.61

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Boulton, B. F.	600	600	12.40	
Brant Rural Exchange	1,500	1,400	28.94	
Brigham, F. D.	1,850	1,850	38.25	
Britton Telephone Company	1,850	1,850	38.25	
Bronson Mutual Telephone Company	4,000	3,500	72.36	
Brown, C. C.	1,800	1,600	33.08	
Brown City Telephone Company	7,500	6,000	124.04	
Camden Rural Telephone Company	12,000	10,000	206.73	
Capac Telephone and Messenger Company	5,200	4,000	82.69	
Cass City Telephone Company	7,000	7,000	144.71	
Cass County Home Telephone Company	60,000	47,000	971.65	
Central Citizens' Telephone Association	1,700	1,500	31.01	
2 Central Michigan Telephone Company	35,000	28,000	578.85	
Chambers Telephone Company	2,000	1,800	37.21	
Chandler, I. B.	4,100	3,600	74.42	
Chapin Mutual Telephone Company	950	950	19.64	
Cheboygan Telephone Company	14,000	14,000	289.43	
Chesaning Home Telephone Company	7,400	7,000	144.71	
Chickaming and Weesaw Telephone Company	550	550	11.37	
Citizens Telephone Company of Banfield	1,550	1,500	31.01	
Citizens Telephone Company of Battle Creek	72,000	72,000	1,488.48	
Citizens Telephone Company of Grand Rapids	2,500,000	2,300,000	47,548.61	
Citizens Telephone Company of Howard City	750	750	15.50	
Citizens Telephone Company of Jackson	160,000	160,000	3,307.73	
Citizens Telephone Company of Marshall	17,900	17,000	351.45	
Citizens Telephone Company of Muskegon	150,000	140,000	2,894.26	
Citizens Telephone Company of Schoolcraft	7,100	7,100	146.78	
Clark Wireless Telegraph and Telephone Company	5,000	5,000	103.37	
Clayton Telephone Company	1,150	1,150	23.77	
Coleman Telephone Company	3,500	2,800	57.89	

Name of company.	Value as assessed.	Value as reviewed.	Taxes.
Concord Telephone Company	2,500	2,500	51.68
Coopers Branch Telephone Company	850	850	17.57
County Line Independent Telephone Company	1,200	1,200	24.81
Dansville Telephone Exchange	500	500	10.34
Davison Telephone Company	5,050	4,150	85.79
Deckerville Telephone Company	2,700	2,400	49.62
Deerfield Farmers' Telephone Company	8,050	7,000	144.71
Dinkel, Mrs. George J.	1,150	1,000	20.67
Easton Independent Telephone Company	2,000	2,000	41.35
Eaton County Telephone Company	20,000	17,000	351.45
Eau Claire Telephone Company	1,800	1,800	37.21
Edwards, John T.	1,050	Nothing	
Elwell Telephone Company	2,400	2,000	41.35
Faner, John G.	1,900	1,500	31.01
Farmers Telephone Company of Coe	1,050	1,000	20.67
Farmers Exchange Telephone Company	7,500	6,500	134.38
Farmers Independent Telephone Company	2,000	2,000	41.35
Farmers Mutual Telephone Company	2,000	1,800	37.21
Fayette Rural Telephone Company	500	250	5.17
Fowler, C. R.	1,150	1,150	23.77
Freeland Telephone Company	2,900	2,700	55.82
Fremont Farmers Telephone Company, Limited	7,500	6,500	134.38
Frontier Rural Exchange	1,500	1,500	31.01
Gaines Farmers Mutual Telephone Company	1,250	1,250	25.84
Garter, H. L.	1,250	1,250	25.84
Girard Telephone Company	2,500	2,000	41.35
Grand Blanc Telephone Company	3,300	3,000	62.02
Grand Ledge Telephone Company	20,000	20,000	413.47

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	Grawn Rural Telephone Company	3,400	3,000	62.02
	Grayling City Telephone Company	3,000	Nothing	
	Hadley Telephone Company	1,600	Nothing	
	Hallenbeck, S. C.	3,650	3,650	75.46
3	Hamilton, W. R.	800	700	14.47
	Hamilton Mutual Telephone Company	1,350	1,200	24.81
	Hanover Telephone Company	500	175	3.62
	Harlan Rural Telephone Company	1,700	1,700	35.14
	Hengesbach, Theo. N.	1,800	1,800	37.21
	Hibbler & Mack	1,100	1,000	20.67
	Hilbert, F. F.	5,500	5,000	103.37
	Hillsdale County Telephone Company	7,800	7,000	144.71
	Hinchman Telephone Company	1,200	1,200	24.81
	Holden and Wilson	4,600	4,600	95.10
	Holton Rural Telephone Company	3,800	3,800	78.55
	Home Telephone Company of Detroit	1,900,000	1,492,000	30,844.58
	Home Telephone Company of Grass Lake	13,850	13,850	286.33
	Home Telephone Company of Monroe	8,200	8,000	165.39
	Home Telephone Company of Palo	10,700	10,000	206.73
	Home Telephone and Telegraph Company, The	23,500	20,000	413.47
	Homer Telephone Company	18,000	16,000	330.77
	Hulbert, S. W.	2,850	2,850	58.92
	Hemingway, E. J.	Nothing	700	14.47
	Ida Telephone Company	9,300	9,000	186.06
	Inter-County Telephone Company	30,000	24,000	496.16
	Inter-State Long Distance Telephone Company	225,000	225,000	4,651.49
	Iosco County Telephone Company	2,450	2,400	49.62
	Independent Telephone Company of Tipton	Nothing	700	14.47
	Kibbie Telephone Company	100,000	80,000	1,653.85
	Lacey Mutual Telephone Company	1,650	1,600	33.08

Name of company.	Value as assessed.	Value as reviewed.	Taxes.
Lakefield Telephone Company	1,200	1,200	24.81
Lamb, W. J.	1,850	1,850	38.25
Laporte Telephone Company	1,350	1,350	27.91
Laughridge, C. A.	1,350	1,350	27.91
Leslie Home Telephone Company	8,100	8,000	165.39
Levering Telephone Company	3,900	3,500	72.36
Litchfield Farmers Mutual Telephone Company	500	300	6.20
Livingston County Mutual Telephone Company	30,000	26,000	537.51
Locke Mutual Telephone Company	2,550	2,300	47.55
Lund, Carl	1,300	1,300	26.88
Macon Telephone Company	1,150	1,000	20.67
Manistique Telephone Company	23,000	15,000	310.10
Marquette County Telephone Company	40,000	40,000	826.93
Memphis Telephone Company	3,000	2,800	57.89
Michigan State Telephone Company	13,000,000	11,500,000	237,743.07
Milford Home Telephone Company	10,000	10,000	206.73
Missaukee Telephone Company	14,000	11,000	227.41
Monroe County Telephone Company	16,000	15,000	310.10
Montmorency County Telephone Company	3,700	3,500	72.36
Moore, W. J.	18,000	17,000	351.45
Morenci Telephone Company	17,500	15,000	310.10
Morrice Telephone Company	650	650	13.44
Mosgrove, E. E.	950	950	19.64
Mundy Telephone Company	6,300	5,500	113.70
Munising Telephone Company	2,000	2,000	41.35
4 Mutual Telephone Company of Copemish	2,950	2,900	59.95
Mutual Telephone Company of Lapeer County	2,400	2,400	49.62
National District Telegraph Company of Michigan	10,000	5,000	103.37

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North Adams Telephone Exchange	750	750	15.50
North Branch Telephone Company	3,050	3,000	62.02
North Onondaga and Eaton Rapids Telephone Company	1,700	1,100	22.74
North Parma Telephone Company	2,650	2,500	51.68
Northeastern Telephone and Telegraph Company	80,000	80,000	1,653.86
Norton Rural Telephone Company	1,000	900	18.61
Oakland County Telephone Company	22,000	22,000	454.81
Oceana Farmers Mutual Telephone Company	10,100	8,000	165.39
Ogemaw Telephone Company	1,950	1,900	39.28
Okemos Independent Telephone Company	1,400	1,400	28.94
Onaway Telephone Company	20,000	19,000	392.79
Onsted Switchboard Association	900	900	18.61
Ontonagon County Telephone Company	7,000	5,000	103.37
Orion Telephone Company	3,950	3,200	66.15
Osceola Rural Telephone Company	3,000	2,700	55.82
Oscoda County Farmers Mutual Telephone Company	4,000	4,000	82.69
Otsego County Telephone —	10,000	7,500	155.05
Palo Telephone Company	6,500	6,000	124.04
Peoples Mutual Telephone Company of Leroy and White Oak	1,900	1,600	33.08
Peoples Telephone Company of Wayne	10,000	8,000	165.39
Phillips Telephone Line	4,150	4,000	82.69
Pigeon Telephone Company	1,400	1,200	24.81
Pine River Telephone Association	750	700	14.47
Plumley, H. A.	1,150	1,150	23.77
Postal Telegraph-Cable Company	300,000	300,000	6,201.99
Pullman Telephone Company	4,000	3,500	72.36
Reading Central Telephone Company	8,400	7,400	152.98
Readmond Township Telephone Company	1,000	1,000	20.67
Ries, Ray M.	1,300	1,200	24.81
Rollin Telephone Company	4,000	3,000	62.02

Name of company.	Value as assessed.	Value as reviewed.	Taxes.
Roscommon Telephone Company	1,700	1,500	31.01
Rural Telephone Company of Waterloo	7,000	6,000	124.04
Richmond Telephone Company	2,500	2,500	51.68
Sagola Telephone Company	1,650	1,600	33.08
St. Charles Roadway Telephone Company	1,000	800	16.54
St. Clair Central Telephone Company	1,550	1,550	32.04
St. Marys Telephone Company	3,200	2,500	51.68
Saline Telephone Company	10,000	10,000	206.73
Sand Creek Telephone Company	2,000	1,600	33.08
Sanduskey Telephone Company	7,000	6,500	134.38
Saugatuck & Ganges Telephone Company	3,400	3,000	62.02
Scio Rural Telephone	1,000	1,000	20.67
Shiawassee Telephone Company	3,000	2,500	51.68
Shiawassee and Genesee Mutual Telephone Company	3,900	3,500	72.36
Smith, George W.	1,350	1,350	27.91
Smyrna Telephone Company	1,550	1,550	32.04
H. E. Soper	1,100	1,100	22.74
5 Southern Michigan Telephone Company	220,000	220,000	4,548.13
Spinks Corners Telephone Company	1,700	1,500	31.01
Springport Telephone Exchange Company	1,800	1,600	33.08
Springport Mutual Telephone Company	1,150	1,000	20.67
Staley and Bricker	5,100	5,000	103.37
Steuben County Electric Telephone Company	2,150	2,000	41.35
Sunfield Co-operative Telephone Company	8,000	7,000	144.71
Superior Telephone Company	2,500	2,200	45.48
Swaverly Telephone Company	25,000	25,000	516.83
Tecumseh Telephone Company	15,000	13,500	279.09
Tekonsha Telephone Company	8,000	7,000	144.71
Thetford Telephone Company	3,800	3,500	72.36

Three Rivers Telephone Company	85,000	85,000	1,757.23
Thumb Telephone Company	5,000	4,200	86.83
Traverse Bays Telephone Company	16,700	16,000	330.77
Twin City Telephone Company	70,000	65,000	1,343.77
Union Telephone Company	575,000	545,000	11,266.95
Union Telephone Line	8,500	8,000	165.39
United Home Telephone Company	75,000	70,000	1,447.13
United States Telephone Company	80,000	65,000	1,343.77
United Wireless Telegraph Company	5,000	5,000	103.37
Valley Home Telephone Company	450,000	400,000	8,269.32
Wakeman, Lyle O.	1,500	1,500	31.01
Waldron Telephone Company	1,900	1,500	31.01
Walled Lake Home Telephone Company	2,650	2,500	51.68
Washtenaw Home Telephone Company	90,000	85,000	1,757.23
Watson Telephone Company	2,550	2,500	51.68
Wayne County Telephone Company	20,000	13,000	268.75
Western Union Telegraph Company	1,400,000	1,500,000	31,009.97
Wexford County Independent Telephone Company	4,600	4,300	88.90
Whiteford Farmers Telephone Company	5,050	5,000	103.37
Williamston Home Telephone Company	4,500	4,000	82.69
Wilson, F. P.	1,650	1,650	34.11
Wise, D. E.	5,450	5,000	103.37
Worden Farmers Rural Telephone Company	1,500	1,500	31.01
Zeigen, Charles	2,500	2,200	45.48

Description of Property.

Real estate, exchanges, switchboards, conduits, telegraph and telephone poles, and lines, and other appurtenances, and all other property used in carrying on the business of said company, and subject to taxation by a State Board of Assessors.

The above description of property appears opposite the name of each telephone and telegraph company on the roll.

6 The total assessment as reviewed for all telephone companies taxed was $20,948,375, and the tax $433,072.

CRESCENT A. PARKER, a witness for complainants.

Direct examination by Mr. CAMPBELL:

I am accountant of the State Board of Assessors. I have tabulated the reports for 1909 of the telephone companies of the State, to the tax commission. Exhibit A, set out in full following, is the tabulation of reports of assessed companies; Exhibit B of non-assessed companies, which is set out in full following:

Name.	Location	Organization	Stock Issued	Dividends Paid	Bonds Outstanding		Cost of Property in Michigan	Operating Receipts	Operating Expenses	Taxes Michigan	Number of Exchanges	Number of Subscribers
Adams, Carl J.	Prairieville	Person, S.L.				A	1850.00	1400.00	1030.00			
Adamsville Telephone Union	Cassopolis	Corp.					595.30	1205.00	1300.00			18
Addison Telephone Exchange	Addison	Person					866.75	1154.00	1154.00			
Adrian Telephone Co.	Adrian	Corporation	50,000.00	3000.00	0		45985.46	24248.34	14941.30	568.58	6	1505
Alamo Mutual Telephone Co.	Alamo	Corporation	684.00		0	A	1500.00	1379.01	1093.00		1	104
Alcona County Telephone Co.	Mikado	Partnership			Note 2800	A	2550.00	505.00	237.00		2	50
Aldrich, A.A.& Son	Hickory Corners	S.L.				A	1350.00	1390.49	964.87			115
Allen Mutual Telephone Co.	Allen	Corp.					2800.00	1575.00	1150.00			225
Almont Telephone Co.	Almont	Person, S.L.				A	3500.00	2716.00	1400.00			225
Alpena Mutual Benefit Tel.Co.	Alpena	Corporation	14,900.00		Notes 10425.61 6000.00		17265.00	16206.95	10763.24	429.27	2	911
American Telephone & Telegraph Company of Michigan	Detroit	Corporation	25,000.00		Accts.pay 294796.34		319383.89	90976.87	79936.64		0	0
American District Telegraph Co.	Detroit	Corporation	10,000.00	500.00			3651.49	824.02	.50	224.02		
American District Telegraph Company of Michigan Ltd.	Detroit	Corporation	140,000.00		Bills pay. 22979.49		165122.75	6 mo. 17714.60	13990.77	75.00		
Arbela Mutual Telephone Co.	Millington					A	4500.00	2563.89	2298.37			75
Arenac Telephone Co.	Sterling	Corporation				OA	3850.00	1127.05	878.00	34.37	2	97
Augusta Co-operative Telephone Company Limited	Augusta	Corp.					970.00	935.44	999.03			24
Aurelius & Vevay Tel.Co.	Mason	Corp.		72.00		A	1200.00	825.00	687.63			83
Bad Axe Telephone Co.	Bad Axe	Person			Mtge. 5500.00	A	4500.00	2652.00	1090.00		1	225
Bainbridge Telephone Co.	Watervliet	Corp.				A	3000.00	1200.00	850.00			16
Ball, Mrs. Edwin	Webster	Person, S.L.				A	850.00	728.00	359.00			75
Baraga County Telephone Co.	Baraga	Partnership					3228.29	1688.00	907.00	17.20	2	90
Beaverton Telephone Co.	Beaverton	Person, S.L.					300.00	730.00	675.00			48
Benzie County Telephone Co.	Benzonia	Corporation	46,260.60	1493.65	11000.00		60527.44	12905.67	10750.51	350.00	7	775
Billings Telephone Co.	Billings	Partnership	625.00	0	Note 200.00		1418.01	626.69	424.83	0	2	63
Birch Lake Telephone Co.	Vandalia	Corp.		0			3823.00	1100.00	990.00			286
Blanchard Telephone Co.	Blanchard	Person		525.00			1110.00	925.00	400.00			30
Blissfield Telephone Co.	Blissfield	Corporation	24,450.00	1407.00	Misc.3800.00		25833.36	7600.00	6243.11	227.76	1	574
Bloomingdale Telephone Co.	Bloomingdale						821.40	900.00	900.00			
Boulton, B. F.	Jonesville	Person, S.L.					800.00	720.00	787.00			
Brant Rural Exchange	St.Charles	Person		(Profits)			1425.00	648.00	552.00			54
Brigham, F. D.	Ortonville	Person, S.L.		(96.00		A	1850.00	732.00	625.00			183
Britton Telephone Co.	Britton	Corporation	2,500.00				1657.00	929.00	875.00	0		250
Bronson Mutual Telephone Co.	Bronson	Corporation	3,750.00	0		A	3500.00	1500.00	1500.00			190
Brown, C.C.	Chatham	Person		0			2360.00	969.08	560.00			25
Brown City Telephone Co.	Brown City	Co-partnership Corp.				0	7769.00	3780.00	2450.00		0	260
Camden Rural Telephone Co.	Camden	Corporation	11,020.00									
Capac Telephone and Messenger Co.	Capac	Corporation	8,140.00	0		A	10000.00	6363.14	6251.86			634
Cass City Telephone Co.	Cass City	Corp.	(40 stockholders.)	420.00	Mtge. 2000.00		4572.95	3435.00	3304.50	44.81	1	270
Cass County Home Tel.Co.	Dowagiac	Corporation	88,985.00	850.85		A	7000.00	2985.00	2549.00			
Central Citizens Tel.Assn.	Medina	Association Corp.	1,530.00	0	124325.00		219433.88	18420.89	11586.52	294.86		
Central Mich.Tel.Co.	Laingsburg	Corporation	49,450.00	4116.25	0			765.00	477.50	23.04	1	102
Chambers Telephone Co.	Postoria	Corporation	3,000.00	600.00	0		50098.00	10955.11	5300.96	316.37	3	857
Chandler, I.B.	Holt	Person, S.L.				A	1800.00	600.00	50.00	18.00		135
Chapin Mutual Telephone Co.	Elsie	Corp.		0			2715.08	1698.29	1220.79			130
Cheboygan Telephone Co.	Cheboygan	Corporation	30,000.00	1860.00			1191.00	700.00	700.00			65
						0	20020.39	7616.34	5231.33	222.59	1	512

Name	Location	Organization	Stock Issued	Dividends Paid	Bonds outstanding		Cost of property in Michigan	Operating Receipts	Operating Expense	Taxes Michigan	Number of Exchanges	Number of Subscriber
Chesaning Home Telephone Co.	Chesaning	Corporation	20000.00	0	0		9000.00	1969.05	2342.50		1	214
Chickaming & Weesaw Tel.Co.	Three Oaks	Corp. S.L.		0			127.59	502.90	498.26			36
Citizens Tel.Co.of Banfield	Delton, R.F.D.						Est'd 2600.00	1531.87	1597.83			4
Citizens Tel.Co.of Battle Creek	Battle Creek	Corporation	172510.00	0	82000.00		232594.86	18932.46	6976.63	529.96	1	
Citizens Telephone Company of Grand Rapids	Grand Rapids	Corporation	3321530.00	255398.14	0		3437771.27	622354.05	275913.44	17284.24		109
Citizens Telephone Company of Howard City	Howard City	Person					2046.00	1200.00	600.00			
Citizens Telephone Company of Jackson	Grand Rapids	Corporation	216000.00	0	216500.00		331776.96	43149.01	23333.49	1325.61		
Citizens Telephone Company of Marshall	Marshall	Corporation	14810.00	0	0		40815.89	6097.21	4712.68	188.19		
Citizens Telephone Company of Muskegon	Muskegon	Corporation	72000.00	5320.00			199546.49	44973.27	28113.44	1446.35	6	1963
Citizens Telephone Company of Schoolcraft	Schoolcraft	Corporation	5000.00		Notes & Bonds 5335.36		8660.19	4049.38	3002.99	21.65	1	230
Clarks Wireless Telegraph and Telephone Co.	Detroit	Corporation	804248.00	0	0		16778.72	2724.14	9964.16			
Clayton Telephone Co.	Clayton	Corp.					620.00	630.00	532.00			
Coleman Telephone Co	Coleman		1000.00	0	Mtge. 830.00		2412.87	1248.36	1361.52	0	1	139
Concord Telephone Co.	Concord						350.00	1100.00	1000.00			269
Cooper's Branch Tel.Co.	Cassopolis	Corp.		205.00			850.00	600.00	395.00			
County Line Independent Telephone Co.	Cohoctah	Corp.		0			4356.20	1097.21	1047.50			135
Dansville Telephone Exchange	Dansville	Person	0	0	0		1000.00	808.00	59.00	0	1	54
Davison Telephone Co.	Davison	Corporation	5800.00		0		6700.62	1537.04	943.24	4.43	1	215
Deckerville Telephone Co.	Deckerville	Person					2119.00	1344.00	(Could not report as he "runs it himself")		1	176
Deerfield Farmers Telephone Co.	Deerfield	Corporation	3110.00	0	Note 250.00		6887.57	1950.87	1366.49		2.	311
Dinkel, Mrs. George J.	Delton	S.L.		311.45		A	1000.00	694.06	382.63			
Easton Independent Telephone Company	Ionia	Corporation	0	0	Loans & Bills Pay. 1185.00	A	2000.00	1760.00	2414.00	0		145
Eaton County Tel.Co.	Charlotte	Corporation	9120.00	0	Note 15040.00	A	17000.00	7560.00	3869.09			557
Eau Claire Telephone Co.	Eau Claire			0			1200.00	1600.00	1300.00			30
Elwell Telephone Co.	Elwell	Association Corp.	1000.00	0	0		2421.76	1073.46	1065.05	22.40		

Name	Location	Organization	Stock Issued	Dividends Paid	Bonds Outstanding		Cost of Property in Mich.	Operating Receipts	Operating Expense	Taxes Mich.	Number of Exchanges	Number of Subscribers
Paner, John G.	Montrose	Person, S.L.					350.00	700.00	500.00			70
Farmers Telephone Company of Coe	St.Louis, Mich.	Association	0									
Farmers Exchange Tel.Co.	Vickeryville	Corporation	7030.00	568.01	0		600.00	650.00	550.00			80
Farmers Independent Tel.Co.	Temperance [Mut.	Association	Corp] 580.00	0	Loan 1200.00 Notes		9512.07	1926.68	823.60	57.80		240
Farmers Mutual Tel.Co.	Elmdale	Corp.		0	2300.00	A	2000.00	552.35	1329.90	0	0	150
Fayette Rural Tel.Co.	Jonesville			0			604.00	546.00	546.00			91
Fowler, C.R.	Jackson, R.F.D.						204.34	1000.00	1000.00			
Freeland Tel.Co.	Freeland	Partnership, S.L.		0			700.00	518.00	250.00			
Fremont Farmers Tel.Co.Ltd.	Croswell	Corp.					1865.50	1748.62	1669.62			171
Frontier Rural Exchange	Frontier	S.L.		0			6477.15	2056.00	2550.00			23
						A	1500.00	800.00	800.00			103
Gaines Farmers Mutual Tel.Co.	Gaines	Corp.		0			835.00	600.00	540.00			
Garter, H.L.	Clarkston	Person, S.L.				A	1250.00	1000.00	800.00			122
Girard Telephone Co.	Girard	Partnership			Mtg. 800.00		3080.00	741.00	206.00		1	100
Grand Blanc Tel.Co.	Grand Blanc	Corporation	4000.00	240.00	Debt 2300.00	A	3000.00	2666.06	1693.49	70.56		209
Grand Ledge Tel.Co.	Grand Ledge	Corporation	36000.20	1583.71			36962.62	5136.65	3553 80	118.80	/	395
Grawn Rural Tel.Co.	Grawn	Corp.					300.00	1121.59	1141 43			
Grayling City Tel.Co.	Grayling	Person					3538.47	3 mo 329 33	260.00		/	63
Hallenbeck, S.C.	Columbiaville	Person, S.L.		223.00			1132.40	2052.00	1853.00			16
Hamilton, W.R.	Birch Run	Person, S.L.				A	700.00	735.00	735.00			
Hamilton Mutual Tel.Co.	Hamilton	Corp.		81.00			239.96	845.29	976.48			
Hanover Tel.Co.	Hanover	Association					65.00	550.00	550.00			
Harlan Rural Tel.Co.	Harlan	Association	1200.00		Notes 200.00		1212.35	883.00	922.41			84
Hengesbach, Theo. N.	Westphallia	Person, S.L.					10.00	791.00	400.00			
Hibbler & Mack	Leonard						900.00	624.00	624.00			57
Hilbert, F. F.	Woodland	Person					6500.00	3000.00	2265.00		1	275
Hillsdale County Tel.Co.	Waldron R.F.D.41	Corp.					6800.00	3893.00	3893.00			595
Hinchman Tel.Co.	Berrien Springs			130.00			1800.00	915.00	785.00		2	65
Holden & Wilson	Imlay City	Partnership S.L.					1882.75	4171.75	2595.12			300
Holton Rural Tel.Co.	Holton	Corporation	5000.00			A	3800.00	1600.00	1300.00	48.00	0	180
Home Tel.Co.of Mich.	Detroit	Corporation	3083344.00		3250000.00		6355567.14	6 mo. 159508.86	223161.12	1880.90	4	9009
Home Tel.Co.of Grass Lake	Grass Lake	Corporation	16580.00	1385.42	5340.00		15761.96	5600.79		211.26		
Home Tel.Co.of Monroe	Monroe	Corporation	14230.00	855.80		A	8000.00	3621.46	2635.76	81.69	2	249
Home Tel.Co.of Palo	Palo	Corporation	19250.00	1779.61			19250.00	3523.99	1638.40	105.98	2	304
The Home Telephone & Telegraph Co.of Ft.Wayne	Ft.Wayne, Ind.	Corporation	545000.00	35200.000	220500.00		Estimate 11188.41	Mich. 165638.89	Mich. 105041.68	161.41	1	471
Homer Tel.Co.	Homer	Corporation	26000.00	1786.65			28519.36	6500.73	4112.95	190.04	1	525
Hulbert, S.W.	Highland	Person				A	2850.00	1909.50	1826.50			271
Hemingway, E.J.	Hadley	Person, S.L.					1600.00	763.00	763.00			
Ida Telephone Co.	Ida	Corporation	11940.00	506.95			9064.67	3420.86	2173.26	83.42	2	370
Inter County Tel.Co.	Northville	Corporation	5000.00		Debt 1000.00		670.58	3776.26	3862.06		3	715
Inter State Long Dist. Tel.Co.	Detroit	Corporation	2280000.00		Bills Pay 200000.00		2221670.64	Extra 630 25252.67	19603.05	1350.50	4	1886
Iosco County Tel.Co.	Malthy	Corporation	2920.00	236.00			3694.82	800.00	305.74	18.00		79
Independent Telephone Co. of Tipton	Tipton	Corporation	1340.00			A	700.00	765.00	756.92			134

Name	Location	Organization	Stock Issued	Dividends Paid	Bonds Outstanding		Cost of Property in Mich.	Operating Receipts	Operating Expense	Taxes Mich.	Number of Exchanges	Number of Subscribers
Kibbie Telephone Co.	South Haven	Corporation	92500.00	5540.50	Bills Pay 14900.00		125893.57	Extra 47 37305.76	23600.04	1053.15	10	2187
Lacey Mutual Tel.Co.	Assyria R #1			0			870.75	600.00	530.00			100
Lakefield Tel.Co.	Holmer	Corp.					1609.05	897.50	842.95			21
Lamb, W. J.	Jeddo	Person, S.L.					2000.00	1261.15	883.00	4.04		89
Laporte Tel.Co.	Laporte	Person Rural Contract S.L.					165.00	737.00	737.00			
Laughrige, C.A.	Bear Lake					A	1350.00					113
Leslie Home Telephone Co.	Leslie	Corp.		0			7536.50	3099.26	3024.88			
Levering Tel.Co.	Levering	Corporation	3000.00		Note 500.00		3000.00	1735.00	930.00	0		
Litchfield Farmers Mut.Tel.	Litchfield	Corp.				A	300.00	519.00	519.00		1	
Livingston Co.Mutual Tel.Co.	Howell	Corporation	20350.00	0	0	A	26000.00	12065.82	9769.76			1200
Locke Mutual Tel.Co.	Webberville	Corporation	10000.00		0	A	2300.00	1030.00	1173.43	2.12	1	300
Lund, Carl	Suttons Bay	S.L.				A	1300.00	1031.17	530.93			
Mason Telephone Co.	Britton	Corporation	1620.00	0	0	A	1000.00	920.00	951.54	4.07		162
Manistique Tel.Co.	Manistique	Corporation	5000.00		0		4850.00	Other income 182.97 7721.51	3286.34	229.60	1	233
Marquette County Tel.Co.	Ishpeming	Corporation	60000.00	0	Misc. 37500.00		98742.14	22875.59	20562.89	624.95	6	1234
Memphis Telephone Exchange	Memphis						3400.00	1782.58	812.00			202
Mich.State Tel.Co.	Detroit	Corporation	8285000.00	309887.00	8366000.00		17646987.88	(Other Receipts) 49235.56 3553778.26	2532765.43	106458.32	205	122919
Milford Home Tel.Co.	Milford	Corporation		3% 7/1/09			11072.44	6 mo. 1800.00	700.00			0
Missaukee Tel.Co.	Lake City	Corporation	20000.00	1400.00	Notes 800.00		18410.00	4432.33	2779.00	115.00		
Monroe County Tel.Co.	Dundee	Corporation	19000.00	2280.00	0		11376.11	6552.60	3025.98	175.65	1	480
Montmorency Co.Tel.Co.Ltd.	Atlanta	Corporation	775.00	0	0		2605.00	1627.00	1626.44	32.50	2	120
Moore, W.J.	Caro	Person					14079.58	12730.00	13710.80	114.28	6	885
Morenci Tel.Co.	Morenci	Corporation	19500.00	1950.00	8000.00	A	15000.00	7488.79	3909.19	175.58		508
Morrice Tel.Co.	Morrice	Person	0				1000.00	665.00	265.00		1	40
Mosgrove, E. E.	Fulton	S.L.				A	950.00	500.00 (Exceeds)				
Mundy Tel.Co.	Swartz Creek	Corporation	6100.00	0	Note 382.94		8097.81	2079.64	1365.00	63.43		235
Munising Tel.& Electric Co.	Munising	Corporation	10000.00	0	0		5288.00	3562.00	3489.00	89.00	1	212
Mutual Tel.Co.of Copemish	Pomona	Corp.					1413.00	1860.00	1390.00			145
Mutual Tel.Co.of Lapeer Co.	Imlay City	Corp.					3662.88	Part of yr. 301.80	1000.00			
National Dist.Teleg.Co.of Michigan Ltd.	Detroit	Corporation	10000.00		0		14441.81	6 mo. 12474.58	10890.96	15.72		
North Adams Telephone Exchange	North Adams	Person	0		0		1291.00	1266.00	1266.00	14.60	1	
North Branch "	North Branch	Person S.L.				A	3000.00	1800.00	1225.00		1	200
North Onondaga & Eaton Rapids Telephone Company	Eaton Rapids	Corp.		0			123.53	810.35	917.21			24
North Parma Telephone Co.	Parma	Corporation		0		A	2500.00	2000.00	2000.00			302
Northeastern Tel.& Teleg.Co.	Detroit	Corporation	100000.00	0	0		140000.00	6 mo. 5000.00	0	775.05	3	471
Norton Rural Telephone Co.	Plainwell #3	Corporation				A	900.00	755.91	755.91			

-10-

Name.	Location	Organization	Stock Issued	Dividends Paid	Bonds Outstanding		Cost of Property in Mich.	Operating Receipts	Operating Expense	Taxes- Mich.	Number of Exchanges	Number of Subscribers
Oakland County Tel.Co.	Pontiac	Corporation	71650.00	0	30000.00		83415.11	10255.48	8872.08	242.49	3	747
Oceana Farmers Mutual Tel.Co.	Hart	Corporation	6375.00	0	0		6375.00	3574.31	3915.46	74.65	1	391
Ogemaw Telephone Co.	Lupton	Corporation	3825.00	191.25		A	1900.00	1174.00	830.00	19.08	2	84
Okemos Independent Tel.Co.	Okemos	Person					2750.00	607.40	Not given		1	
Onaway Tel.Co.	Onaway	Corporation	4000.00		Loans		18829.30	8802.71	5300.00	248.40	2	473
					9857.19							
Onsted Switchboard Assn.	Onsted						1000.00	604.73	597.55			
Ontonagon County Tel.Co.	Rockland	Corporation	12500.00	0	Loan	A	5000.00	5279.30	4677.16	146.58		160
					1850.00							
Orion Telephone Co.	Orion	Corporation	4800.00	264.00	0	A	3200.00	1943.85	1781.80			196
Osceola Rural Tel.Co.	Hartwick	Corp.		0			2737.60	645.11	640.00			160
Oscoda County Farmers		Corp.										
Mutual Tel.Co.	Fairview			0			1465.02	1200.00	350.00			
Otsego County Telephone	Gaylord	Person			0		10895.90	4183.80	3095.25	125.51	2	231
Palo Telephone Co.	Palo	Corporation	10000.00	551.04	0		10385.66	2776.26	2147.70	77.52	1	224
Peoples Mutual Tel.of												
LeRoy & White Oak	Webberville	Corp.					1188.50	978.17	971.73			158
Peoples Tel.Co.of Wayne	Carleton	Corporation	10600.00	Stock 4125.00	Notes		8899.62	5341.00	3519.00	82.80	4	354
Phillips Tel.Lines	Ogden	Person			6969.00	A	4000.00	1600.00	500.00			20
Pigeon Tel.Co.	Pigeon	Person		0			1710.00	648.00	292.00			57
Pine River Tel.Assn.	Alma R. #2						197.00	639.48	639.48		1	130
Plumley, H. A.	Metamora	Person, S.L.				A	1150.00	528.00	300.00			115
Postal Teleg-Cable Co.	Detroit	Corporation	50000.00		0	A	300000.00	170305.42	166340.44	628.59		
Pullman Tel. Co.	Edwardsburg	Firm	5000.00			A	3500.00	1350.00	977.50	33.75	1	90
Reading Central Tel.Co.	Reading	Corp.					9703.93	4097.78	3973.96		2	597
Readmond Twp.Tel.Co.	Readmond			0			398.80	516.49	531.32			
Ries, Ray M.	Goodrich	Person, S.L.				A	1200.00	672.00	348.00			116
Rollin Tel.Co.	Townley	Corp.		0			1456.39	1627.47	2463.61			253
Roscommon Tel.Co.	Roscommon	Corporation	2100.00	0	0		2060.00	677.11	442.29	14.22	1	84
Rural Tel.Co.of Waterloo	Stockbridge	Corporation	11050.00	0	0	A	6000.00	1205.82	2269.92	31.29	3	320
Richmond Tel.Co.	Richmond	Corporation S.L.	2000.00	0			1800.00	4 mo. 350.00	280.00			
Sagola Tel.Co.	Sagola	Corporation	2000.00	200.00			2496.00	774.30	557.89	23.61	1	20
St.Charles Roadway Tel.Co.	Ithaca R #4	Corp.		0			659.31	995.35	866.79			53
St.Clair Cehtral Tel.Co.	Emmet	Person		660.40			748.00	928.00	267.60			69
St. Marys Tel.Co.	Cleveland,O.	Corp.		0			9644.59	884.40	901.19			
Saline Tel.Co.	Saline	Person, S.L.					5150.00	6200.00	3800.00	100.00	1	500
Sand Creek Tel.Co.	Sand Creek	Corp.					175.00	600.00	555.00			11
Sandusky Tel.Co.	Sandusky	Corp.		0			2476.40	2005.13	1946.11			290
Saugatuck & Ganges Tel.Co.	Douglas	Corporation	1790.00	0		A	3000.00	3494.31	3225.00		5	226
Scio Rural Tel.	Scio	Rural Exc.S.L.				A	1000.00	732.00	768.00			85
Shiawassee Tel.Co.	Perry	Corporation	2000.00	0	Debt	A	2500.00	1024.59	1004.08	32.40	0	90
Shiawassee & Genesee					900.00							
Mutual Tel.	New Lotnrop	Corporation	6450.00	0		A	3500.00	1768.42	1625.51	28.14	2	266
Smith, Geo.W.	Stanwood	Person, S.L.		0			21.00	925.56	625.00			
Smyrna Tel.Co.	Smyrna	Corp.					1610.00	517.93	10.00		1	65
Soper, H. E.	LUM	S.L.		0			182.10	580.67	566.66			100
Southern Mich.Tel.Co.	Burr Oak	Corporation	584825.00	37196.12	Current Liability 104526.29		609946.18	60147.28	23968.25	1183.95		3550

-71-

Name	Location	Organization	Stock Issued	Dividends Paid	Bonds Outstanding		Cost of Property in Mich.	Operating Receipts	Operating Expense	Taxes-Mich.	No.of Exchanges	No.of Subscriber
Spinks Corners Tel.	Spinks Corners	Corporation	?			A	1500.00	524.50	535.00	15.75	1	40
Springport Tel.Exchange Co.	Springport	Corp.					152.38	1174.86	1059.08			118
Springport Mutual Tel.Co.	Springport	Corporation		0			1100.00	1428.65	1534.31			314
Staley & Bricker	Yale	Partnership S.L.					2774.15	4688.00	4336.00			287
Steuben Co.Elec.Tel.Co.	Angola, Ind.	Corporation					2278.45	Mich. 950.00	Mich. 750.00			75
Sunfield Co-op.Tel.Co.	Sunfield	Corporation	3760.00		Mtge. 4000.00		7852.00	1 mo. 266.72	288.39	0	1	247
Superior Tel.Co.	Grand Marais	Corporation	1900.00	0	0		3322.93	611.89	385.45	34.60	1	58
Swaverly Tel.Co.	Kalkaska	Corporation	47302.26	0	Bills Pay 8305.32 15000.00		.07	Records destroyed by fire.			10	1100
Tecumseh Tel.Co.	Tecumseh	Corporation	15000.00	600.00	0		20352.21	8988.24	6578.17	196.57	1	425
Tekonsha Tel.Co.	Tekonsha	Person, S.L.			Mtge. 2350.00	A	7000.00	3835.00	2537.00			314
Thetford Tel.Co.	Clio	Person, S.L.					553.39	1960.00			1	178
Three Rivers Tel.Co.	Three Rivers	Corporation	98350.00	6757.60	Mtge. 20000.00		121507.46	30955.93	18709.47	693.42		
Thumb Tel. Co.	Pt. Sanilac	Corporation	10000.00		0		4182.00	2735.00	2620.00	0		250
Traverse Bays Tel.Co.	Central Lake	Corporation	10760.00	756.25	Mtg.& Notes 6935.00		18370.19	8200.06	6020.06	233.84		220
Twin City Tel.Co.	Benton Harbor	Corporation	92100.00	0	Loans B.& P. 68880.92		171736.49	25537.24	17378.62	732.59	2	1210
Union Tel.Co.	Alma	Corporation	700000.00	54000.00	0		785925.79	165518.33	83866.70	4428.76	55	8789
Union Telephone Line	Ubly	Person			0		11295.25	4275.00	3453.25	87.27	2	365
United Home Tel.Co.)			)138600.00	0	0)		193368.34)	4671.80	5012.21)	340.41)	10	2024
Lake Shore Tel.Co.)	Ludington	Corporation	) 68300.00	0	47000.00)		)	23913.41	18855.09)	756.42)		
United States Tel.Co.	Cleveland,O.	Corporation	4029500.00	54165.00	2405750.00		67693.46	other 34214.98 433116.10	170500.99	258.06	Toll property 0	
United Wireless Telegraph Co.						Est.	5000.00	10.18				
Valley Home Tel.Co.	Saginaw	Corporation	641570.83	0	125000.00		686019.58	6 mo. 65073.93	44255.83	1952.21		
Wakeman, Lyle O.	Boyne Falls	Person, S.L.		236.00		A	1500.00	805.00	569.00			59
Waldron Tel.Co.	Waldron						129.72	1189.27	1145.95			0
Walled Lake Home Tel.Co.	Walled Lake	Association	2870.00	0	Loan 350.00		3800.00	Part of yr. 844.90	617.74			130
Washtenaw Home Tel.Co.	Ann Arbor	Corporation	230900.00	0	229000.00		478620.18	21789.51	20770.80	768.34	3	1889
Watson Tel.Co.	Watson	Corporation	2296.00	0			2296.00	753.00	667.00			170
Wayne Co.Tel.Co.	Plymouth	Corporation	29000.00	1285.00	0		29384.76	4941.47	2322.94	164.18	1	540
Western Union Telegraph Co.	New York	Corporation	99817100.00	2739435.50	38645000.00	A	1500000.00	Misc. 1379948.13 29161124.42	23193965.66	3089.64		
Wexford County Ind.Tel.Co.	Sherman	Corporation	S.L.2190.00	0	0	A	4300.00	1900.00	904.00	51.00	3	154
Whiteford Farmers Tel.Co.	Ottawa Lake R.F.D.	Corporation	3090.00	0	0		6745.92	1150.00	1150.00			222
Williamston Home Tel.Co.	Williamston	Person		582.92			7000.00	3358.00	2765.08			240
Wilson, F.P.	Smith's Creek	Person, S.L.					61.00	825.44	787.87			
Wise, D.E.	Croswell	Person					2867.89	3572.00	3228.00		2	250
Worden Farmers Rural Tel.Co.	Worden	Corporation	1320.00	0	0		1000.00	702.00	702.00			
Zeigen, Charles	Dryden	Person, S.L.					Est'd. 1600.00	1600.00	990.00	0		150

EXHIBIT B.

Name	Location	Organization	Cost of Property	Gross Receipts	Gross Expense	No. of Exchanges	No. of Subs.	Remarks.
Adair Roadway Co.	Adair	S.L.	84.21	135.82	164.42		17	
Aetna Telephone Co.	Morley			162.00	161.00			10 miles poles, 20 miles wire.
Algansee Central Tel.Co.Ltd.	Algansee		496.00	384.00	380.00	1	100	Less than 100.
Amble Tel.Co.	Amble		438.00	40.57				2 months operation.
Angerer, Chas.	Scofield	S.L.		147.00			43	M.S.T.
Arcada Farmers Mutual	Alma			None			10	M.S.T. - 2 miles wire.
Arcadia Telephone Co.	Lapeer		400.00	"				
Arenac, Ogemaw & Iosco Tel.	Twining #2 (Prin.Office Prescott)	Capital stock Corp.$60	680.00	30.00	80.00			
Ashley Home Tel.Co.	Ashley							Just installed.
Ashley Rural Tel.Co.	Ashley				25.00		9	4 miles poles; 8 miles wire.
Alaiedon & Mason Tel.Co.	Mason	Mutual		None				6 miles line.
Baldwin, M.D.	Port Huron		387.40	330.00	275.00		15	
Baltimore Centre Tel.	Hastings R.F.D.#4		120.00		78.48		12	
Bammell Roadway Co.	Marine City				11.00			3 miles poles; 5 miles wire.
Bannister Mutual Tel.Co.	Bannister		129.43	32.00	29.43			
Bar Lake Roadway Tel.Co.	Manistee R F D		90.00	15.00	60.00			
Barryton Rural Tel.Co.	Barryton		226.00		36.00			
Bassett Roadway Co.	Lapeer		88.38		12.00			
Belle River Mills Tel.	Marine City							100 poles & wire thereon.
Belb River Roadway Co.	St. Clair							1 3/4 miles line.
Bendon Rural	Bendon		360.00	252.00	252.00			M.S.T. phone
Berrien County Home Tel.Co.	Galien							Not in operation
Bethany Tel.Co.	St.Louis		58.92	355.24	339.16			
Big Four Tel.Co.	Manistee		258.00	28.00	16.00		13	M.S.T. phone
Big Hand Road Tel.Co.	St. Clair	Roadway	196.50		196.50		15	" "
Big Prairie & Everett	White Cloud				25.00			27 miles line; 37 miles wire.
Big Rapids & Grant	Paris	Roadway	500.00		245.00			
Big Rapids, Lilley & Bitely Tel.Co.	Big Rapids		561.58	10.40				
Black Creek Farmers Tel.Co.	Harvard		95.00	3.00	3.00		6	
Bluff Creek Tel.Co.	Coleman		251.25		143.75			One month operation.
Blackmore & Sammons	Leslie		150.00				14	
Bowman Roadway Co.	St.Clair R.F D#3		336.50		172.51			
Boyce A.A.	Bay City		300.00					
Bradford Roadway Co.	Lapeer		173.91				11	
Bridgman Tel.Co.	Bridgman		600.00	400.00	450.00			
Bridgewater Center Tel.Co.	Clinton		250.00	234.00	229.05			
Brooklyn & Clark Lake Tel.Co.	Brooklyn				10.00		35	5 miles line; 4 miles wire.
Brooklyn & South Norvell Tel.Co.	Brooklyn	Contract Co.					30	30 shareholders; 20 miles line
Brooklyn Switchboard Ass'n.	Brooklyn	Capital Stock $300-250.00		65.00	65.00			
Broomfield Tel.Co.	Millbrook			20.00	10.00		17	33 miles line; 66 miles wire
Bryan Tel.Co.	Bryan, O.	Corporation	340.00	186.65	25.00			4 telephones; stock 59,000;Bonds 25,000; Dividends 4720.00.
Buckeye Tel.Co.	Alanson		50.00	34.34	350.00			
Budge, W.M.	Tustin							
Bunker Hill Tel.Ex.	Leslie			71.50	62.00			10 miles line
Burnett, S.S.	Lake Ann							
Burr Oak Mutual Tel.Co.	Burr Oak		2143.33	26.00	90.00		65	Just installed
Busy Bee Tel.Co.	Munith		7.25		25.00		11	

Name	Location	Organization	Cost of Property	Gross Receipts	Gross Expense	No. of Exchanges	No. of Subs.	Remarks.
Cambridge and Woodstock Tel.Co.	Brooklyn			14.90	14.90		22	10½ miles line; 21 miles wire.
Cambridge Junction Tel.Co.	Brooklyn		5.00	21.00	18.00		21	8 miles line; 8 miles wire.
Campbell Bros.	Cloverdale	S.L.		478.59	267.00		120	No line owned.
Carr Telephone Co.	Branch		550.00		25.00			
Cavanaugh Lake Rural Tel.Co.	Chelsea		176.00		24.00		8	
Cedar Valley Telephone Co.	Winn		97.00					
Center Road Telephone Co.	Hastings		251.12	54.15	54.15			
Ceresco Telephone Co.	Ceresco		900.00	120.00	120.00			
Chelsea and Francisco Tel.Co.	Chelsea			5.00	130.00		26	14 miles line; 28 miles wire.
Cheney Roadway Co.	Scotts							4 miles line; 8 miles wire.
China Roadway Co.	St.Clair		192.00				15	
China-St.Clair Tel.Co.	St.Clair		49.30	62.64	62.64		9	
Chippewa Lake Telephone Co.	Rodney	Labor donate	207.88	24.00			39	
Chippewa Rural Tel.Co.	Barryton			49.00	49.00		14	5½ miles line.
Citizens Mutual Tel.Co.of Vantown	Vantown	Corp.$860.Stock		258.00	334.33	1	86	
Citizens Tel.Co.of Alcona	Harrisville	Corp.$200 Stock	467.75	29.05	62.24		49	
Citizens Tel.Co.of Berrien	New Troy	Mut.$1,425. "	1,210.00	414.00	196.00		70	Nov. 1.
Clam Union Tel.Co.	McBain		328.05	2.00	1.50		40	
Clark, Jas.H.	New Lothrop		5.00	20.00			5	¼ mile line; ⅛ mile wire.
Clam Lake Rural Tel.Co.	Cadillac		200.00		300.00			
Clark Roadway Co.	Adair		182.00	12.00	7.20		13	
Clayton Sand Creek Bimo Co.	Seneca		40.00	15.00	3.11			
Cleveland Valley Telephone Co.	Maple City		168.50		70.00			
Clifford Lake Independent Tel.Co.	Stanton							Building Aug.'09;6 mi.line; 6 mi.wire.
Clinton & Shiawassee Rural	Laingsburg	Stock outstanding $20.	800.00	142.00	200.00		62	Authorized capital stock.
Clinton Independent Tel.Co.	Clinton		64.00	42.50	42.50		9	
Coe, S. D.	Romeo	Individual rural lines.	484.50	420.00	192.00			
Coldwater Roadway Tel.Co.	Flushing		85.04					
Coldwater Rural #1 Tel.	Barryton						8	Operated 5 mo. 8 mi.line; 8 mi.wire.
Coldwater Tel.Co.	LeRoy		64.00				12	
Colfax Tel.Co.	Big Rapids		95.00				10	
Colfax Tel.Co.#2	Big Rapids		27.00		98.73		10	
Colonville Roadway Co.	Clare		59.90				10	
Conklin, F.J.	East Gilead			259.00	45.00		37	20 miles line; 40 miles wire.
Conway Antrim Tel.Co.	Byron		5.00	100.00	90.00			7 miles line; 13 miles wire.
Cork, W. H.	Cedar		600.00	300.00	225.00		10	M.S.T.phone.
County Center Tel.Co.	Hastings		146.00	15.00	114.75		1	
Cowing Line	Henrietta						7	3 miles line; 6 miles wire.
Crawford County Farmers Tel.Co.	Grayling	Association	1850.00	238.00	75.00	1	37	Stock outstanding $1850.
Crosby Tel.Co.	Muskegon		620.00					
Crystal Lake Farmers Mutual Tel.Co.	Frankfort		175.80					
Crystal Tel.Co.	Crystal		200.00	231.19	234.00		82	
Curtisville Telephone Co.	Lapeer		408.56		547.05		1	
Curtissville Tel.Co.	Barryton		226.00				12	
Custer Peach Belt	Scottvill		123.29	4.50	7.00		21	
Custer Tel.Co.	Custer		79.00	233.92	133.92			
Cyclone Tel.Co.	Morley		135.00					
Daggett,Nathan Faithorn Tel.Co.	Daggett		968.52	367.30	196.40		7	
Deerfield Rural Tel.Co.	Morley		200.00	20.00	35.00		9	
Densmore, E.F.	Maple City		80.00	40.00	45.00		6	
Dewing Telephone	LeRoy		175.00				10	
Diamond Lake Tel. Co.	Ramona		237.27				14	
Drenthe Independent Tel.Co.	Zeeland #3.		1390.56	8.00	18.00	1	57	

Name	Location	Organization	Cost of Property	Gross Receipts	Gross Expense	No.of Exchanges	No.of Subs.	Remarks
East Alaiedon Tel.Co.	Mason		161.25	12.00	1.50			
East Bethany Tel.Co.	Breckenridge			25.00	25.00		7	1 mile line; 1 mile wire.
East Elmira Tel.Co.	Gaylord		1500.5 5	205.61	179.09		47	
East Ferris Union Tel.Co.	Vestaburg		840.00	5.40	51.05		20	
East Freesoil Tel.Co.	Freesoil		104.19	2.50	.85		10	
East Gilmore Roadway Co.	Farwell		75.00				1	
East Hope and West Baltimore	Hastings						13	No income
East Irving & Hastings	Hastings		2.80	55.50	55.50		10	
East Paradise Tel.Assn.	Kingsley R F D #2		614.80				25	
East Saugatuck Tel.Co.	Holland R F D #8		1472.16	435.65	606.81		55	
East Shore Tel.Co.	Lakeside		1200.00	275.00	220.00		20	
East Town Line	Lapeer		218.26		4.11			
Eastwood Roadway Co.	Eastwood		150.00		150.00		8	
Eaton Rapids & West Aurelius Tel.Co.	Eaton Rapids		300.00	12.00	22.00			
Eby, Christian	Alba		53.27		25.35		44	
Eddy, Ed. Clinton Rural #3	Clinton			50.00	50.00		10	4 miles wire; 4 miles line.
Eden Tel.Co.	Scottville, RFD#2		172.50	261.25	261.25		15	
Edenville Tel.Co.	Edenville		192.00				18	
Edwards, Jno. T.	Belleville	S.L.	180.00	384.50			43	
Elba Center Tel.Co.	Lapeer		109.17		134.20			
Elba Tel.Co.	Lapeer				132.00		16	4 miles line; 10 miles wire.
Ellsworth Telephone	Luther		130.00	180.00	180.00		30	
Elm Grove Tel.Co.	Lapeer		140.53					
Empire Rural Tel.Co.	Empire		793.00	50.00			31	
Enterprise Tel.Co.	Coleman		160.00				14	
Etchell & Mason Tel.Co.#2	Leslie RFD #3		70.00		15.00			
" " " " " #1	Mason		70.00		15.00			
Eureka Tel.Co.	Remus		374.78				17	
Evart & Emerald Tel.Co.	Evart RFD #1		3.00		10.00		28	
Evart & Emerald Tel. Line	Evart				8.00		29	16 miles line; 22 miles wire.
Evart & Muskegon Valley Tel.Co.	Evart		300.00					
Evart Centerline Tel.Co.	Evart		58.32	77.00	90.67		37	
Everette Centre Tel.Co.	Newaygo							
Fairview Roadway	Hunters Creek		36.00				8	
Fall Creek Tel.Co.	Hastings RFD #8		225.80		43.16		8	
Farmers Independent Tel.Co.	Trufant		165.00		1.50		11	
Farmers Indepepdent Tel.Co. of	Deckerville	Capital Stock	1500.00	360.00	360.00			
Farmers Mutual Tel.Co.of Bannister	Bannister		76.63	2. 00	2.00		14	
" " " " " Chapin	Chapin		718.50		39.40		56	
" " " " " Grand Traverse County	Summit City	Corporation	1982.22	122.00	99.43		98	Stock outstanding 2275
Farmers Mut.Tel.Co.of Robinson	Grand Haven		843.17	15.50	22.32		34	
" " " " " Sandstone	Parma R.F.D.#1		400.00	28.00	28.00		7	
Farmers Telephone Co.	Big Rapids RFD #1		107.74		.68			
Farmers Union Mut.Co.of Twp.of Baltimore	Quimby RFD #1		376.25	67.44	67.44		12	
Farmers Union Telephone Co.	Manton		200.00		200.00			
" " " "	Morrice		87.00	66.25	69.06			
Fitchburg Tel.Co.	Stockbridge RFD #3		380.00	350.00	350.00		21	
Five Points Tel.Co.	Holly RFD #2		50.00		12.00		8	
Flint River Tel.Co.	Lapeer		60.00	184.00	184.00		18	
Forest Home Tel.Co.	Lapeer							Begun operation 7/1/09; 4 miles line
Fremont Northwestern Tel.Co.	Fremont RFD #8						15	7½ miles line; 15 miles wire.
Frontier Rural Exchange	Frontier			500.00	500.00		100	12 miles line; 24 miles wire.
Fulton Mutual	Pompeii				70.00		14	4 3/4 miles line; 4 3/4 miles wire.

Name.	Location	Organization	Cost of Property	Gross Receipts	Gross Expense	No.of Exchanges	No.of Subs.	Remarks.
Gaswell Roadway Tel.	Marine City		150.00		5.00			
Genesee Roadway Co.	Saginaw RFD #6		110.31	24.38	124.69		9	
Gilbert Tel. Co.	Manton		350.00	231.00	231.00			
Gilhouse & Zorn	Manchester		184.00	246.00	246.00		59	
Gilmore Rural Tel.Co.	Farwell		400.00	40.00	10.00			
Gladwin & Nolan Tel.Co.	Gladwin		900.00	255.40	261.00			
Gladwin County Tel.Co.	Gladwin	Corporation	1967.87	410.00	381.00			Stock outstanding $2213
Gladwin Road Tel.Co.	Coleman		56.00				8	
Gleaner Tel.Line	Evart							6 miles line; 12 miles wire.
Gobleville Farmers Mut.Tel.Co.	Gobleville	Corporation	1333.75	450.00	283.14	1	75	Stock outstanding $900;Debts $1300.
Goodwell Tel.Co.	Woodville		616.75		49.80			
Grand River Valley Tel.Co.	Eaton Rapids		360.00					
Grass Lake & No. Sharon	Grass Lake		5.00		5.00		13	10 miles line; 10 miles wire.
Gratiot Roadway	Richmond		135.35					
Green Oak Tel. Co.	Lapeer		28.00	7.50	28.00			
Greenwood Mutual Tel.Co.	Harrison		360.00	8.00	7.00		27	
Groveland Grange Tel.Co.	Holly RFD #1						15	M.S.T. line #98.
Gun Plains Roadway Co.	Plainwell		216.00	55.00				
Guetler Roadway Co.	Marine City		72.00				16	
Hastings & Carlton Co-operative Co.	Hastings RFD #5		391.50	233.50	252.50			
Hayes & Elmira Tel.Co.	Gaylord		728.00	45.00	15.00			
Hempstead, S.A.	Laingsburg		400.00	392.00	200.00			
Henrietta Central	Munith RFD #3				18.00			15 miles line; 15 miles wire.
Henrietta Farmers Tel.Co.	Munith						15	10 miles line; 20 miles wire.
Herrick Roadway	Clare		158.00				15	
Herring Lake Tel.Co.	South Frankfort		369.62	345.45	328.06		13	
High Street Tel.Co.	Hastings		225.00	50.00	50.00			
Hills Rural Tel.Co.	Au Gres		583.00	230.50	215.75		23	
Hinton Mutual Tel.Co.	Lakeview		619.00		50.00			
Hitchcock Roadway Tel.Co.	Scotts							3 miles line, 3 miles wire.
Hoadley, R.P.	Three Oaks						6	2½ miles line; 5 miles wire.
Holloway Tel.Co.	Holloway	Corporation		489.07	427.07		?	St.Outstg.$1200,Taxes $15.83; 32½ miles line; 62½ miles wire.
Holly Centre Tel.Co.	Holly		50.00					
Hope Improvement Tel.Co.	Hope		200.75		150.45			
Horton Bay Roadway	Horton Bay		153.10				9	
Horton Mutual Tel. Co.	Horton		125.00	125.00	125.00			
Houghton Lake Tel.Co.	Houghton Lake		713.43	137.56	125.85		10	
Hunters Creek Tel.Co.	Hunters Creek		73.66				10	
Husel, Chas. Z.	St. Clair		16.00	4.00			3	2 miles line; 4 miles wire.
Ingersoll Rural Tel.Co.	Midland RFD #7			13.60	3.00		68	34 miles line; 39 miles wire.
Ironwood Rural Tel.Co.	Ironwood		655.00	515.00	655.00		16	Debt of $140.
Irving Tel.Co.	Irving			32.50	32.50		12	7 miles line; 7 miles wire.
James,Henry F.(part owner Waterford,Mich.)	Chamber of Commerce Detroit		100.00	25.00	25.00			
Jasper Tel.Co.	St.Louis		966.00					18½ milesline; 68½ miles wire.
Junior Tel.Co.	Okemos		261.80	54.06	48.84		9	
Kalamazoo Home Tel.Co.	Kalamazoo		350.00					Constructing Receipts less than $350. Expenses some.
Kalkaska County Tel.Co.	South Boardman		1950.64	20.00			17	
King Roadway Tel.Co.	St.Clair		40.00	92.08	92.08			
Kinney W.L.	Marion		300.00	75.00	37.50			

Name	Location	Organization	Cost of Property	Gross Receipts	Gross Expense	No.of Exchanges	No.of Subs.	Remarks.
Laberteaux Tel.Line	Leslie							
Lake & Osceola County Co-op.Tel.Co.	Tustin		123.64					
Lake Ann & Oviatt Tel.Co.	Empire RFD #1		986.00				48	
Lake Region Tel.Co.	Peacock		194.87	121.50	99.38		3	
Lake View Tel.Co.	Hastings		125.00	61.00	61.00		9	
Lapeer View Tel.Co.	Lapeer		62.00	63.00	63.00		9	
Lapeer Twp.Central	Hunters Creek		100.00		84.00			
Larkin Rural Tel.Co.	Midland RFD #6		250.00		60.00		18	
Laserlere, C.H.	Clinton		36.00				10	
Leelanau Mutual Tel.Co.	Northport		325.00	175.00	175.00			
Leighton Tel.Co.	Moline		225.00	236.00	250.00			
Leota Tel.Co.	Evart		224.00	142.38	44.79		3	
LeRoy Rural Tel.Co.	LeRoy		44.59					
LeRoy Twp.Tel.Co.	LeRoy		100.00					6 miles line; 12 miles wire.
Lester Tel. Co.	Montgomery	Mutual			82.50		16	9½ miles poles; 9½ miles wire.
Littlefied, J.L.	Farwell		172.00					
Little River Tel.Co.	Morley RFD #2		166.47					
Locke, A.J.	Lockport-Midland RFD #7							M.S.T.phones 9.
Lone Pine Tel.Co.	Lapeer		43.36					
Loxley Tel.Co.	Loxley		47.50	34.20	50.00		21	
Lucas Farmers Tel.Co.	Lucas		600.00				40	
Lumen & Curtis	Coleman				43.30			10½ miles line.
Luther & Hoxeyville Tel.Co.	Luther		493.00				17	
Lyndilla Tel.Co.	Gregory RFD #2	Corporation		473.60	629.00	1	146	Stock outstanding $4060; Indebtedness outstanding $350 Cap. 4060 Debt. 350 4410
Lyons Mutual Tel.Co.	Lyons, C. (Morenci,M.)		237.00					
Macomb County Tel.Co.	Mt.Clemens	Corporation						Not built.Cap.St.Outstanding $500. 10 members
Manitou Beach Tel.Co.								
Maple Grove Tel.Co.	Lapeer		61.00	71.75	71.75		11	
Maple Grove Rural Tel.Co.	Nashville		260.00	56.65	69.30			
Maple Ridge Farmers Mutual	Tustin							13 miles line; 25 miles wire.
Maple Valley Tel.Co.	Vestaburg		83.67	92.82				
Marengo Prairie Tel.Co.	Newaygo						26	21 miles metallic cir.
Marsh Road Tel.Co.	St.Clair RFD #3		209.46		209.46		20	
Martin Roadway Co.	Plainwell		98.00		49.00		7	
Martin Roadway Co.	Three Oaks	(Less than)	60.00	65.00	65.00		8	2½ miles line; 3½ miles wire.
Martin Telephone Line	Bad Axe		480.00	112.00	70.00			
Mason & Okemos Tel.Co.	Okemos		4840.00	408.00	27.50			
Mason Dexter Road Tel.Co.	Mason				2.70			10 miles line; 10 miles wire.
Matthews, T.W. Line 14	Clinton		45.00	54.00	48.00		9	
Mayfield & Deerfield	Lapeer		342.00		105.00		15	
Mayfield Central Tel.Co.	Lapeer		64.97		182.00		13	
Mayfield Tel.Co.	Lapeer			5.00	126.00		18	7 miles line; 14 miles wire.
Meade Tel.Co.	Meade							
Mecosta Mutual Tel.Co.	Mecosta		249.52					
Michigan Ave.Roadway Co.	Dearborn				68.00		9	5 miles wire.
Michigan District Telegraph Co. 20	Clifford St.Detroit		None		.53		2000	
Middleton Farmers Tel.Co.	Perrington RFD		780.00	104.00	65.00		27	
Milan Roadway Co.	Milan		84.62	84.62	84.62		7	
Miles Albert	Ellsworth		15.00				8	
Mill Roadway Tel.Co.	Richmond		180.00	21.60	21.56		20	
Millville Tel.Co.	Lapeer		70.00				24	
Mirror Lake Tel.Co.	Lapeer		194.99					
Misner Tel.Co.	Marine City		133.58	91.00				
Mitchell Road Tel.Co.	St.Clair RFD #3		149.38	149.38	149.38		10	
Monta Crum Tel.Co.	Wheeler		10.00	58.00	58.00			
Moore, Andrew J.	Carp Lake		106.00	166.08	166.50		15	
Mt.Vernon Roadway Co.	Rochester RFD #2		141.72				13	
Mutual Tel.Co.of Stockbridge	Stockbridge		90.00	30.00	212.00		85	

Name	Location Organization	Cost of Property	Gross Receipts	Gross Expense	No.of Exchanges	No.of Subs.	Remarks.
Newark & Fulton Independent	Ithaca	250.00	69.70	89.70		23	
Niedermeier, A.E.	Newport	35.00	307.68				
Noone, John H. Pres. (now Louis Hoenes)	Clinton					12	6 miles line.
North Adams Tel. Co.	North Adams		309.00				30 members
North Baltimore Tel.Co.	Quimby	554.00	125.00	125.00		21	
North Bethany Tel.Co.	Breckenridge	27.37	255.00	236.00			
North Burns Tel.Co.	Byron					10	6 miles line; 12 miles wire; 10 members
North Custer Tel.Co.	Scottville	115.36					
Northeast Bethany Tel.Co.	St.Louis	100.00				20	
Northeastern Tel.Co.	Mio	1200.00	500.00	610.00		8	
North East Leslie Tel.Co.	Leslie	281.36	97.50	88.90		32	
North East Wheeler Tel.Co.	Wheeler	72.00	80.00	80.00			
North Flushing Roadway Co.	Flushing					20	Built in June. Unknown. 10 miles line.
North Gilmore Roadway Co.	Farwell	50.00	8.17	20.00			
North Grant & Hersey Tel.Co.	Hersey						Building. 4½ miles line; 9½ miles wire.
North Hersey Tel.Co.	Hersey	258.78		455.55			
North Leoni & Grass Lake	Grass Lake	120.00		20.00		11	10 miles line.
North Marshall Tel.Co.	Ceresco					16	11 miles line; 22 miles wire.
North Osceola Tel.Co.	Evart	83.20				9	
North Oxford Rural Tel.Co.	Oxford	72.20		89.34			
North Paradise Tel. Ass'n.	Kingsley P.O.	382.75	68.75	212.60			
North Perrington Mutual Tel.Co.	Perrington	145.30					
North Quincy Tel.Co.	Quincy	125.00	130.50	120.70			
North Rives & Leslie Tel.Co.	Leslie		5.00	1.50			9 miles line.
North Rose Tel.Co.	Holly	31.25				5	
North Shade Tel.Co.	Middleton						
North Star Tel.Co.	Cement City	6.00				12	
Norvell & Manchester Tel.Co.	Norvell		12.13	13.30		15	8 miles line; 16 miles wire.
North Western Rural Tel.Co.	Oxford	400.00				48	
North Western Leslie & N.E. Onondago Tel.Co.	Leslie	600.00	44.00	27.00			
North Western Mason Co.Tel.Co.	Ludington, RFD #4	90.02		64.00			
North West Quincy Tel.Co.No.1	Quincy	55.04	73.15	65.79		21	
North West Rutland Tel.Co.	Irving	494.26		69.00			
Northwestern Tel. Co.	Canandaigua	1130.00	210.00	125.00		21	
North Winfield Tel.Co.	Morley	500.00				23	
Okemos & Haslett	Okemos	200.00	67.50	67.50		15	3 miles line; 3 miles wire.
Onekama Tel.Co.	Onekama	317.85	138.00	94.85			
Onondaga Tel.Co.	Onondaga	132.00	354.00	273.29		22	
Orangeville & Prairieville Rural	Doster	131.00	150.00	210.00		27	
Oregon Central Roadway Co.	Lapeer	84.45					
Ovid Mutual Tel.Co.	Shepardsville	3375.00	416.31	446.87		135	
Partello & Springport	Springport		160.00	160.00		40	14 miles line; 18 miles wire.
Partello Telephone Co.	Marshall	40.00	360.00	343.00		4	
Park Avenue Tel.Co.	Hersey	123.37	124.46	123.37		7	
Peninsula Farmers Tel.Co.	Old Mission	216.00		10.00		52	
Perrington Independent Tel.Co.	Perrington	437.00		5.50		19	Stock.
Perryville Tel.Co.	Holly	260.00				13	
Pinconning Mutual Tel.Co.	Pinconning	1033.00	37.19	106.20		76	
Pine Creek Tel.Co.	Lapeer	50.00					
Philip Roadway Co.	Marine City	145.61	145.61				
Pleasant Lake Tel.Co.	Leslie			4.75		17	14 miles line; 14 miles wire.
Pogy & West Tel.Co.	Evart	5.32					13 miles line; 40 miles wire.
Portage Lake Tel.Co.	Grass Lake	51.00	73.15	51.61		19	
Porterville Onondaga	Leslie						6 miles line; 12 miles wire.
Portland Tel.Co.	Portland	3115.27				147	Sale of Stock only.
Port Sheldon & Lake Shore Tel.Co.	Grand Rapids	600.00	86.25	21.80		9	
Powell Roadway Co.	Plainwell			32.50		10	5 miles line; 5 miles wire.
Puddigot Roadway Tel.Co.	St.Clair	1.50	99.00	90.75		11	5½ miles line; 5½ miles wire.

Name	Location	Organization	Cost of Property.	Gross Receipts	Gross Expense	No.of Exchanges	No.of Subs.	Remarks.
Randolph Tel.Co.	Le Roy		120.86	10.00	.75			
Range Line No. 186	St.Clair		150.00	91.00	10.00			
Ranney Tel.Co.	Rives Jct.		1.77	34.50	30.27			10 miles lines; 10 miles wire.
Rau, S.M.- MST Co.	Weidman		225.00					
Ray Centre Tel.Co.	New Haven		170.00					
Reading Tel.Co.	Reading		1500.00	83.31	364.36			
Richardson Roadway Co.	Algonac		114.15				10	
Richland Tel.Co.	McBain		705.80	39.75	39.75		53	
Riga Farmers Tel.Co.	Riga		580.00	232.00	232.00		58	
River Side Tel.Co.	Lapeer		44.25					
River Roadway Tel.Co.	Marine City RFD #2		56.68	85.18	28.50		8	
Rives & Leslie Tel.Co.	Rives Jct.		400.00	230.00	270.00			
Rose Center Tel.Co.	Holly			97.00	97.00		12	7½ miles line; 14½ miles wire.
Rose Lake Tel.Co.	Le Roy							9 miles line; 20 miles wire.
Rural Co-op. Tel.Co.	Quimby		643.23	130.90	133.78			
Rutland Tel.Co.	Shultz			112.50	114.25			12 miles line; 16 miles wire.
Salt River Tel.Co.	Rosebush RFD #1		256.75	394.75	394.75			
Samaria Farmers Tel.Co.	Samaria	Corporation	10.00	216.00	214.00	1	112	Stock outstanding 2500.
Sanford Mut.Tel.Co.Ltd.	Sanford		850.00				30	
Sauble Telephone Co.	Ludington RFD #5		97.00				9	
Sawyerville Tel.Co.	Le Roy RFD #3		247.00		8.14			
Seneca Bimo Tel.Co.	Seneca							8 miles line; 8 miles wire.
Sheridan Roadway Co.	Clare RFD #2		56.00	2.00	4.00		13	
Sherman City Rural Tel.Co.	Freesoil		634.45	382.75	362.00		32	
Shiawassee Mutual Tel.Co.	Bancroft			191.00	173.41			23 miles line; 46 miles wire.
Shultz Tel.Co.	Shultz			60.00	60.00			3 miles line; 8 miles wire.
Sidney Tel.Co.	Sidney		350.00				35	10 miles line property.
Schaub, Simon	Provemont		155.00	55.00	55.00		5	
Smith & Laird(Terre Haute, Ind.)	Brutus		125.00		75.00			
Soper, H.E.(Lum Rural Ex.)	Lum		182.10	298.29	312.00		100	
South Antrim Tel.Co.	Morrice		45.00	100.00	80.00			
South Bend Home Tel.Co.	South Bend, Inc.	Mutual		396.34			3	26 miles pole - 2 pay stations.
South Bethany Tel.Co.	St.Louis		56.00	63.20	63.20			1 3/4 miles line - 3½ miles wire.
South Bunker Hill & North Henrietta	Munith #1		130.00	100.00	100.00		20	
South Burns Tel.Co.	Byron		50.00		2.00			
South Butler Tel.Co.	Quincy		5.00	26.00	30.00			7 miles line; 10 miles wire.
South Fulton Rural Tel.Co.	Perrington		244.14		50.00			
South Groveland Roadway Co.	Holly		139.63	171.98	171.98			
South Hinton Tel.Co.	Lakeview		345.00		42.25		13	
South Ogden Tel.Co.	Ogden		237.71		237.71			
South Rose Tel.Co.	Holly						12	3 miles line
South Rutland Center Tel.Co.	Hastings		232.92	58.65	58.65			
" Town Line Roadway Co.	Metamora		210.00				11	
Southwest Springfield Tel.Co.	Davisburg		146.12		146.12		12	
Springborn Road Tel.Co.	Marine City		195.00					
Springbrook Tel.Co.	Springport			44.00	44.00			7½ miles line.
Springvale Tel.Co.	Springvale	Corporation	421.85	15.00	15.00		9	Stock outstanding $1800.
St.Clair China Roadway Co.	St.Clair		92.00	92.00	92.00		16	
St.Clair River Tel.Co.	St.Clair		171.06		8.87			
St.Clair Roadway Co.	Marine City		103.00					
Stafford, Wm. R.	Port Hope	Exchange	75.00	85.00	60.00		9	M.S.T.Co.
Standish Tel.Co.	Standish RFD #3		341.00	72.00	296.00			
Star Mutual Tel.Co.	Luther		155.70				8	
Star Tel.Co.	Alba		58.00	55.00	5.00			
Star Tel.Co.	Hastings		118.37				8	
Star Tel.Co.	Mecosta						23	9 miles line; 18 miles wire.
Starville Roadway Co.	Marine City		90.00		55. 00			
State Road Telephone Co.	Goodells		207.50				7	
State Road Telephone Co.	Hastings							
State Road Telephone Co. of Henrietta Twp.	Munith R F D #1		67.28		173.88		18	
State Road Roadway Co.	St. Charles		95.20					
State Roadway Co.	St.Clair						12	4½ miles wire.

Name	Location	Organization	Cost of Property	Gross Receipts	Gross Expense	No. of Changes	No. of Subs.	Remarks.
Stevenson Lake Roadway Co.	Clare		28.50		19.25			
Stony Run Tel.Co.	Holly		181.35	145.00	145.00			
Stringey Lakes Rural Tel.Co.	Oxford RFD #2		71.46	127.46	127.46		8	
Sugar Grove Telephone Co.	Scottville		67.22		7.00			
Summer Rural No. 1 (Jos.Kleis)	Carson City		410.03				17	
Summit Tel.Co.	Ludington		168.00	5.00	42.00		6	
Sherman Tel.Co.	Freesoil		105.69				10	
Taylor, F.H.	Pickford		1350.00	4.50	3.00		40	
Theisen Roadway Co.	St.Clair RFD #2		None	None	None		None	No property.
Thompson Tel.Co.	Lapeer						9	4 miles line; 9 miles wire.
Tobey Tel.Co.	Freesoil			None	None		5	1 mile line.
Toledo Beach Home Tel.Co.	Temperance	Corporation	1936.00	61.32	323.92		24	Cap.Stock outstanding $1500; Outstanding indebtedness $400.
Tompkins Exchange Tel.	Rives Junction #1			35.13	19.70			No property.
Town Corner Tel.Co.	Tustin							3 miles wire.
Townline Roadway Co.	Boyne City		92.00		15.00		7	
Townline Roadway Co.	St. Clair						17	3 miles line; 7 miles wire.
Townline Tel.Co.	Ashley		100.00					
Townline Tel.Co.	White Cloud		95.41	111.41	9.80		10	
Townsend, G. S.	Six Lakes		576.30	187.00	117.50		26	
Trist Telephone Co.	Munith				81.00		21	10 miles line; 10 miles wire.
Van Tilburg Tel.Co.	Galien		86.72					
Vernon Roadway	Clare				64.00		8	2 miles line.
Village Hill Tel.Co.	Fremont		25.00		2.40		8	
Wakefield Tel.Co.	Dryden RFD #2		125.00	7.00	2.00		11	
Wallace Tel.Co.	Wallace		40.91	76.23	81.84		8	
Walnut Lake	Birmingham		300.00				12	
Washburn Roadway Line	Glendora		200.00				15	
Washington Center Mutual Tel.Co.	Pompeii		5.50					60 miles line; 80 miles wire.
Waterloo Central Tel.Co.	Munith			9.90	96.80		17	10 miles line; 20 miles wire.
Wedel Roadway Co.	Galien		40.75					
Weipert & Meyers	Strassburg							6 miles wire
West Amber Tel.Co.	Ludington		112.00	56.00	56.00		8	
West Argentine Tel.Co	Byron		285.00		12.95		147	
West Attica Tel.Co.	Lapeer		215.10				14	
West Burns Tel.Co.	Bancroft		200.00				8	
West Flushing Roadway Co.	Flushing		97.75		53.00		7	
West Rose Roadway Co.	Davisburg		125.00				11	
West Rutland Tel.Co.	Hastings		494.26	69.60	69.60		14	
West Town Line	Lapeer		175.00	9.00	148.10		20	
Whiteford Tel.Co.	Whiteford Center		27.50	6.00	51.25			
White River Tel.Co.	White Cloud							6 miles line.
White River Valley Tel.Co.	White Cloud RFD #1		365.63	370.08	365.63			
Wilcox Tel.Co.	White Cloud		6.30	6.00	47.10			7½ miles line; 7½ miles wire.
Willover Tel.Co.	Holly		77.17				8	
Winn Rural	Winn	Partnership	1456.00	12.00	11.00	1	65	
Winsor, R.J.	Boyne RFD #2		125.00				8	
Wisconsin Land & Lumber Co.	Hermansville							No property.
Wise Mutual	Coleman						14	2 miles line; 2 miles wire.
Wise Telephone Co.	Loomis		200.00	100.00	100.00			
Woodville Tel.Co.	Woodville			190.40	185.30		3	12 miles line; 24 miles wire.
Wolf Creek Mutual	Adrian RFD #4			200.00	200.00		45	10 miles line; 10 miles wire.
Wright Roadway	Plainwell		75.00					
Wauseon Tel.Co.	Wauseon, O.			25.00				
Yankee Street Roadway	St. Clair							½ mile wire.
Zaring Roadway	Galien		330.65	152.25	155.20			

21 These exhibits cover the reports for year ending June 30, 1909. (The reports for all companies for that period produced and offered in evidence on behalf of complainants, being reports from which tabulations Exhibits A and B were made.)

W. J. BERRY, a witness for complainants.

Direct examination by Mr. CAMPBELL:

I am employed by the Michigan State Telephone Co.; have been in telephone business and employed by that company twenty-one years, occupying positions from chief operator to superintendent, my present position; have been superintendent since March, 1904.

My principal work for past three years has been dealing with subsidiary companies of, and their relations to, the Michigan State Telephone Co. That company has relations with over 500 subsidiary companies in Michigan. The arrangement between Michigan State Telephone Co., and these companies is by contract. We have three forms of contract covering practically all our connections; the "sub-license," "rural," and "roadway."

The sub-license company is generally a separate organization, not always incorporated, who undertake to give telephone service in a certain locality or territory, which may be limited to a township or extended over a whole county or more.

We have sub-license contracts with corporations, individuals, partnerships, associations and mutual companies. As a rule the sub-license company makes a regular charge for telephone service and operates for profit; with mutual companies operating under sub-license contracts this is not altogether true. They conduct their business the same as we do. The sub-license company runs its own business; we have no control of their business. The lines are constructed by themselves or the sub-license company, and the instruments either leased from us or owned by themselves.

(A general objection was made to all testimony relating to taxed companies which were not complainants, on the ground that the discrimination complained of was between complainants, and the property exempted, and that testimony as to taxed companies, not complainants, was immaterial.)

22 The witness produced a list of 91 M. S. T. sub-license companies taxed for 1909, as follows:

Addison Tel. Exchange.
Alamo Mut. Tel. Co.
Alcona County Tel. Co.
Allen Mutual Tel. Co.
Almont Tel. Co.
Alpena M. B. Tel. Co.
Arbela Mut. Tel. Co.
Arenac Tel. Co.
Bainbridge Tel. Co.
Baraga County Tel. Co.
Beaverton Tel. Co.

Billings Tel. Co.
Boulton, B. F.
Britton Tel. Co.
Bronson Mutual Tel. Co.
Brown, C. D.
Brown City Tel. Co.
Camden Rural Tel. Co.
Capac Tel. & Messenger Co.
Central Citizens Tel. Assoc.
Chandler, I. B.
Cheboygan Tel. Co.
Chesaning Home Tel. Co.
Citizens Tel. Co., Schoolcraft.
Coleman Tel. Co.
Dansville Tel. Exchange.
Davison Tel. Co.
Deckerville Tel. Co.
Deerfield Farmers Tel. Co.
Easton Ind. Tel. Co.
Eau Claire Tel. Co.
Elwell Tel. Co.
Farmers Tel. Co. of Coe.
Farmers Ind. Tel. Co.
Girard Tel. Co.
Hibbler & Mack.
Grand Blanc Tel. Co.
Hillsdale Co. Tel. Co.
Hinchman Tel. Co.
Holden & Wilson.
Hanover Tel. Co.
Inter-County Tel. Co.
Iosco County Tel. Co.
Kibbie Tel. Co.
Lamb, W. J.
Levering Tel. Co.
Litchfield Farmers Mut. Tel. Co.
Livingston Co. Mut. Tel. Co.
Locke Mutual Tel. Co.
Macon Tel. Co.
Manistique Tel. Co.
Memphis Tel. Co.
Moore, W. J.
Morrice Tel. Co.
Mundy Tel. Co.
Munising Tel. & Elect. Co.
Mutual Tel. Co. of Copemish.
North Branch Tel. Co.
Northeastern Tel. & Telg. Co.
23 Norton Rural Tel. Co.
Oceana Farmers Mut. Tel. Co.
Ogemaw Tel. Co.
Onaway Tel. Co.

Onsted Switchboard Assoc.
Ontonagon Tel. Co.
Orion Tel. Co.
Peoples Mut. Tel. Co. of Leroy & White Oak.
Peoples Tel. Co. of Wayne.
Richmond Tel. Co.
Rural Tel. Co. of Waterloo.
Sagola Tel. Co.
St. Clair Central Tel. Co.
St. Marys Tel. Co.
Saline Tel. Co.
Shiawassee Tel. Co.
Spinks Corners Tel. Co.
Stanley & Bricker.
Sunfield Co-operative Tel. Co.
Tecumseh Tel. Co.
Tekonsha Tel. Co.
Three Rivers Tel. Co.
The Thumb Tel. Co.
Traverse Bays Tel. Co.
Twin City Tel. Co.
Wakeman, Lyle O.
Waldron Tel. Co.
Watson Tel. Co.
Wexford County Ind. Tel. Co.
Whiteford Farmers Tel. Co.
Wise, D. E.
Zeigen, Charles.

The witness produced a list of its connections under rural plan, containing twenty-eight companies taxed for 1909, also a list of three of its connections which were roadway companies which were taxed for 1909, as follows:

Rural.

A. A. Aldrich & Son.
Adams, Carl J.
Ball, Mrs. Edwin.
Brant Rural Exchange.
Brigham, F. D.
Dinkel, Mrs. Geo. J.
Faner, John G.
Freeland, Tel. Co.
Frontier Rural Exc.
Garter, H. L.
Grawn Rural Tel. Co.
Hallenbeck, S. C.
Hamilton, W. R.
Harlan Rural Tel. Co.
Hemingway, E. J.
Hengesbach, Theo. N.

Hulbert, S. W.
24 Laporte Rural Tel. Co.
Laughridge, C. A.
Lund, Carl.
Mosgrove, E. E.
Plumpley, H. A.
Ries, Ray M.
Scio Rural Tel. Co.
Smith, Geo. W.
Soper, H. E.
Wilson, F. P.
Worden Farmers Rural Tel. Co.

Roadway.

Chickaming & Weesaw Tel. Co.
Readmond Township Tel. Co.
St. Charles Roadway Company.

The witness also produced a list of its connections, not taxed for 1909, showing twenty-five sub-licensees, twenty-eight rurals, and 213 roadways, as follows:

Sub-License.

Ashley Home Tel. Co.
Brooklyn Switchboard Assoc.
Bridgman Tel. Co.
Citizens Tel. Co., New Troy.
Bates, M. A.
Citizens Co., Harrisville.
East Shore Tel. Co.
Fulton Mut. Tel. Co.
Hills Rural Tel. Co.
Hempsted, S. A.
Kinney, R. C.
Lyndilla Tel. Co.
Meade Tel. Co.
Mueller Wm. Co.
Manitou Beach Tel. Co.
Moore, A. J.
Middleton Farmers Tel. Co.
Munith Telephone Co.
Pinconning Mut. Tel. Co.
Stafford, W. R.
Seneca Exchange.
Samaria Farmers Tel. Co.
Taylor, F. H.
U. S. Gypsum Co.
Wisconsin Land & Lumber Co.
Wallace Telephone Co.

Rural.

Angerer, Chas.
Allen, Arthur.
Budge, W. M.
Brown, Chas. D.
Briggs, Lester.
Campbell Bros.
Conklin, F. J.
Clark, J. H.
Covey, Wesley B.
Cork, W. H.
Densmore, E. F.
Edwards, John T.
Eby, Christian.
Eaton, O. W.
Forbes, Elmer.
Gilhouse & Zorn.
Gowing, J. Angus.
Horen, J. S.
Joyce, Geo. W.
Lardie, John.
Niedermeier, A. E.
Plumley, H. C.
Rau, S. M.
Schaub, Simon.
Snyder, John.
Seegmiller, Adam.
Winslow, R. L. (Hemlock).
Weipert & Meyer.

Roadway.

Arcada Mut. Tel. Co.
Alaiedon & Mason.
Adair Roadway Co.
Arcadia Tel. Co.
Boyce, A. A.
Bammel Roadway Co.
Baldwin, M. D.
Bridgewater Center Tel. Co.
Bridgeton Roadway Co.
Big Rapids-Lilley & Bitely Co.
Big Rapids & Grant Co.
Bethany Tel. Co.
Bassett Roadway Co.
Belle River Roadway Co.
Bar Lake Roadway Co.
Belle River Mills Tel. Co.
Battle Point Tel. Co.
Big Hand Road Tel. Co.
Bradford Roadway Co.

Bowman Roadway Co.
Crystal Lake Roadway Co.
Colfax Tel. Co. #1.
" " " #2.
Cadillac & Pine River Tel. Co.
Cheney Roadway Co.
Custer Peach Belt Tel. Co.
Cavanaugh Lake Tel. Co.
Crane, C. L.
Ceresco Tel. Co.
Cowing Line.
China Roadway Co.
Custer Tel. Co.
Clark Roadway Co.
China-St. Clair Ry. Co.
Curtissville Tel. Co.
Coldwater Roadway Co.
Colonville Roadway Co.
Daggett-Nathan-Faithorn Co.
East Town Line Ry. Co.
Eddy, Ed.
East Mitchell Ry. Co.
Eden Tel. Co.
26 Emmet Telephone Co.
Etchell & Mason Tel. Co. #1.
" " " " " #2.
Elm Grove Tel. Co.
Elba " "
" Center " "
East Freesoil Tel. Co.
Eastwood Roadway Co.
East Gilmore Roadway Co.
Fairview Roadway Co.
Franklin & Cambridge Tel. Co.
Franklin-Manchester Tel. Co.
Flint River Tel. Co.
Farmers Mut. Tel. Co.
Five Points Tel. Co.
Francisco Tel. Co.
Farmers Mut. Tel. Co.
" " " "
Forest Home Tel. Co.
Guetler Roadway Co.
Gladwin-Nolan Tel. Co.
Gladwin Co. Tel. Co.
Green Oak Tel. Co.
Groveland Grange Tel. Co.
Gratiot Roadway Co.
Grant Twp. Roadway Co.
Gunplain Roadway Co.
Genesee Roadway Co.
Grand River Valley Roadway Co.

Gaswell Roadway Co.
Hand Roadway Co.
Hoadley, R. P.
Halliday, H. H.
Husel Roadway Co.
Hunters Creek Tel. Co.
Holly Centre Tel. Co.
Hitchcock, R. H.
Herrick Roadway Co.
Horton Bay Tel. Co.
Ironwood Rural Tel. Co.
King Roadway Co.
Lazerlere, C. H.
Lancaster Tel. Co. #1.
" " " #2.
Lester Tel. Co.
Leoni Central Tel. Co.
Lapeer Twp. Central Co.
" View Tel. Co.
Lone Pine Tel. Co.
Manchester Ry. Co. #71.
" " " #153.
" " " #155.
" " " #72.
" " " #76.
Mirror Lake Tel. Co.
Mayfield-Deerfield Tel. Co.
Mill Roadway Co.
Martin, Wm.
Marshall, Bert.
Mathews, P. W.
Munith-Grass Lake Tel. Co.
Marsh Road Tel. Co.
Mitchell Road Tel. Co.
27 Mt. Vernon Ry. Co.
Martin Roadway Co.
Mason & Dexter Ry. Co.
Mayfield Tel. Co.
Martin, Clarence.
Millville Tel. Co.
Maple Grove Tel. Co.
Michigan Ave. Roadway Co.
Miles, Albert.
Mizner Tel. Co.
Monta Crum Tel. Co.
Milan Roadway Co.
Mayfield Central Tel. Co.
North Star Tel. Co.
North Grant & Hersey Tel. Co.
North Bethany Tel. Co.
Noone, J.

North Berlin Tel. Co.
Northwestern Rural Tel. Co.
North Custer Tel. Co.
Northwestern Tel. Co.
Norvell & Manchester Tel. Co.
North Marshall Tel. Co.
North Rose Roadway Co.
North Gilmore Roadway Co.
Northeast Wheeler Tel. Co.
No. Flushing Roadway Co.
Northwest Bethany Tel. Co.
Ovid Mutual Tel. Co.
Oxford Rural Tel. Co.
Onekama Tel. Co.
Owl Tel. Co.
Oregon Central Ry. Co.
Perry, J. E.
Puttigott Tel. Co.
Partello Tel. Co.
Phillips Roadway Co.
Park Ave. Roadway Co.
Powell, J. C.
Perryville Tel. Co.
Porter Twp. Roadway Co.
Pine Creek Roadway Co.
Quarter Line Ry. Co.
Riverton Centre Tel. Co.
Riverside Tel. Co.
Ranney Tel. Co.
Range Line Tel. Co.
River Raisin Tel. Co.
Rose Center Tel. Co.
Ray " " "
Richardson Roadway Co.
River Roadway Co.
Sheridan Roadway Co.
Summit Tel. Co.
Springvale Tel. Co.
So. Bethany Tel. Co.
" Rose " "
State Road Tel. Co.
Sugar Grove Tel. Co.
So. Burns Tel. Co.
" Manchester Line #70.
" " " #73.
" " " #33.
28 St. Clair Roadway Co.
" River Ry. Co.
State Road Tel. Co.
So. Town Line Ry. Co.
Stony Run Tel. Co.

Sherman Tel. Co.
St. Clair Mut. Tel. Co.
Starville Roadway Co.
So. Groveland Roadway Co.
Stevenson Lake Tel. Co.
Spaulding Roadway Co.
Springborn Roadway Co.
Salzburg Roadway Co.
Southwest Springfield Co.
Stringey Lake Roadway Co.
Sauble Tel. Co.
Thyson Roadway Co.
Town Line Roadway Co., St. Clair.
Town Line Roadway Co., Boyne City.
Van Town-Mason Roadway Co.
Vantilburg Tel. Co.
Vernon Roadway Co.
Washburn, C. L.
West Amber Tel. Co.
Wedel Roadway Co.
West Rose Roadway Co.
Walnut Ridge Tel. Co.
Woodville Tel. Co.
Winsor, R. J.
Willover Tel. Co.
Walloon Lake Tel. Co.
West Flushing Ry. Co.
West Argentine Tel. Co.
Wise Telephone Co.
West Town Line Ry. Co.
Wakefield Tel. Co.
West Attica Roadway Co.
" Avenue Roadway Co.
Wright Roadway Co.
Wayside Tel. Co.
Walnut Lake Tel. Co.
Westrick Roadway Co.
Yankee Street Ry. Co.
Zaring Roadway Co.
Toby Telephone Co.

29 "A. A rural contract is generally made with an individual who undertakes to develop a certain section or a certain territory, through the co-operation of the farmers who generally build the lines on the highway in which they reside and own those lines as an association. They contract individually for a connection with the rural exchange, and the rural manager leases them telephones and does their switching, on a certain rental."

The organizations with which the rural manager is connected, have in a few cases been incorporated; they are generally composed of an association covering the individuals on a certain highway. Our contract is with the rural manager.

7
3

He makes his own contract with the patrons under a form we print to keep the business and rates uniform. The instruments are furnished by us to the rural manager under rental, and by him to the farmers. The rural is operated for profit by the manager. The rurals operate generally in the same manner, this being required under their contracts with us; some are assessed and some not; rural manager operates the exchange.

"The roadway plan contemplates the construction of telephone lines by farmers to connect with an existing exchange of our company. We generally meet them at the city or village limits or some convenient point, with our line, and we give them the same service that our exchange subscribers receive. We are not charged with the maintenance or the care of the instruments or the line under this plan."

30 Under the roadway plan the lines are generally constructed in any case by associations. A few are constructed by corporations; but generally by voluntary associations. In cases of the Roadway plan, the secretary or treasurer, or the person appointed by the association to do that work, makes the collections from the subscribers. The association or the corporation appoints its own agent to make the collections, and he makes his settlements with our company. The exchange is operated by our company. These roadway companies are all generally operated in substantially the same manner. I could not say as to whether there are instances where on the same highway there is an association operating under the roadway plan and also another line of telephones or other telephone lines serving practically the same region; it would be assumed otherwise, as the roadway plan line would generally be built for the purpose of furnishing that service,—serving that particular section.

Cross-examination by Mr. WYKES:

It is my impression that the other complainants have arrangements similar to our sub-license, rural and roadway plans. Taking the sub-licensees, the roadway and the rural contracts that we have, we have contracts with somewhat over 500 persons, institutions or associations.

Q. That is, so far as you know, they are not any of them principal companies which make a contract with sub-licensees, the same as your company does, the same as the Michigan State does?

A. Why, our sub-licensees make contracts with other—with sub-license companies, and individuals and other associations, and of different forms, they may be called a principal company for the very fact that they are able to do that; we do not restrict them as to how they shall handle their business.

The larger portion of rurals are contracts with individuals. The percentage of corporations in the roadway or sub-license lines, is very small.

31 As connected with our company, the percentage of exempted companies organized as corporations, is small. The sub-license contract does not depend altogether on the size of the company; it is made where it appears to fit the situation better than

the other form. The roadway contract is more prevalent on account of its being limited to a very small territory or highway.

The $273,000 that we had in the hands of sub-license companies in 1909, included all property and was not confined to telephones; the amount would be less this year.

The contract form is the general form of sub-license contract. We have no printed form for this; it varies in minor details, dependent upon local conditions, not affecting the real relations between our company and these others.

Under the sub-license arrangement, the property the sub-license company operates belongs to M. S. T. or that company. Under the contract we attempt to furnish to them telephone sets, under various options; they may be connecting with our company without our having any investment in the plant. We may own a part of the line, if it were in existence when we made the contract. We own the switchboard of very few sub-licensees; we do own the rurals.

Of the sub-licensee we may own a portion of the line; the switch board and some of the telephones. To the sub-licensee we make a nominal charge for the use of our property, which involves the maintenance by him. The rental for our property does not run over $3 a telephone; where they rent the receiver and transmitter, they pay less.

On the switchboard they pay a flat rental or so much a "drop." The sub-licensee carries on its own local business. On business passing over our line and theirs they pay toll less a commission.

The toll business is our business, we never part with that; as compensation for collecting and remitting we allow them a commission.

In the "rural" the line usually belongs to an association of farmers that live along the route served; our contract is not with the association, but with the rural manager; his arrangement is with the people on his line.

32 The character of our arrangement with him is as set forth in contract form (Def'ts' Ex. 1.) as follows:

This Agreement, made this — day of ——, 190– by and between the Michigan State Telephone Company, a corporation organized and existing under the laws of the State of Michigan, party of the first part, and —— —— of —— Township, —— County, Michigan, party of the second part; witnesseth:

Whereas: The party of the first part is the licensee of the American Bell Telephone Company for territory including the township of ——, County of ——, and is now engaged in operating telephone exchanges and toll lines in said territory, and the party of the second part desires to operate a rural telephone exchange and toll station at —— in said —— Township, with telephones and telephone apparatus obtained from the party of the first part, and to acquire the right to transmit messages over the lines of the party of the first part, as hereinafter provided, from stations connected with the office of the party of the second part;

Now Therefore, the parties hereto, each in consideration of the agreements herein contained on the part of the other, agree together as follows:

The party of the first part will furnish a telephone for public use on the premises of the party of the second part, and will install on said premises a suitable switch-board equipped with operator's telephone, of a capacity sufficient for the needs of the business of the party of the second part, provided that business shall not require more than one hundred lines, and will place a terminal pole with the necessary cross-arms, insulators, and fixtures, at a convenient location outside of the building of the party of the second part, and will furnish the necessary wires running from such pole to such switch-board, and will install the same in such manner that lines of the subscribers of the party of the second part may be built to said pole and connected with the wires aforesaid leading therefrom to said switch-board.

The party of the first part will supply at its office in ——, as many sets of telephones as may be required, of the standard form furnished by the American Bell Telephone Company for similar purposes; a set of telephones to consist of one solid back transmitter, one bi-polar receiver, one magneto call bell, one cut-out switch, back-board, cords and first installation of battery.

The party of the first part will also furnish and connect with the said switch-board a toll line connecting with the general system of the Company, for the purpose of furnishing toll line service to all subscribers whose lines connect with this switch-board and to the public through the public telephone station on said premises, and will also furnish without charge a reserve supply of telephone instruments for the purpose of replacing defective instruments that may be returned by subscribers to the party of the second part.

The party of the first part will pay the party of the second part a commission of twenty-five per cent. (25%), not exceeding ten cents (10c.) on any one message, on all toll line business originating and paid for at the second party's stations.

The party of the second part shall equip all his subscribers' stations with sets of telephones obtained from the party of the first part. He shall also use in operating his said office only sets
33 of telephones obtained from the party of the first part, and shall not permit a station equipped with a set of telephones not obtained from the party of the first part to be connected with the aforesaid switch-board which is to be installed by the party of the first part. He shall have the right to connect his subscribers' lines with any lines of the party of the first part which reach said switch-board. He shall request each of the subscribers connecting with this switch-board to build the lines in metallic circuit form, using not less than No. 14 gauge steel wire, and he shall not place more than twenty (20) stations on any one line in order not to interfere with or impair the quality of service furnished through the lines of the party of the first part connected as aforesaid.

The party of the second part desires to make contracts with those desiring to rent telephones from him only on a form identical with that which is attached hereto, known as "Rural Telephone Service. Terminal Station Contract, Form 56", and to send copies of such contracts as soon as completed, to the office maintained by the party of the first part at ——.

The party of the second part further agrees to pay to the party of the first part, a rental of Three Dollars per annum in advance for each set of such instruments in use, and to pay One Dollar per annum for each drop used on the switch-board furnished by the party of the first part, the rental for each telephone to become due and payable as soon as it is put in use, and the rental for each drop to become due and payable when such drop is put in active service on said switch-board.

The party of the second part further agrees not to permit any line on wires which shall be connected with the switch-board aforesaid, to be used exclusively as a trunk line or wire between that switch-board and any other rural telephone service terminal station switch-board.

As regards communications from the office of the party of the second part to outside points over the lines of the party of the first part, the party of the second part shall observe, and require his customers to observe, such regulations as the party of the first part may from time to time make for the use of its lines, and shall himself pay the party of the first part the regular tolls charged by it on all such communications, whether from toll stations or subscribers' stations, less the commission hereinbefore stated.

If a person, firm or corporation desires a special service, independent of the regular service, for the purpose of direct communication with the line of the party of the first part, and the party of the second part does not desire to furnish this service, the party of the first part will furnish the same to such applicant at the regular schedule rate for this class of service, connecting the subscriber's line with the switchboard upon the premises of the party of the second part; and, in such event, will pay to the party of the second part, a commission of twenty-five per cent. (25%) on the rental charged therefor in addition to the regular commission for such toll line service as such subscriber may obtain over the lines of the party of the first part, the commission on the rental being understood to be paid for the operator's services in connecting the said subscriber's line with the other lines connected with the same switch-board.

In case of any failure in the payment of any sum due hereunder, or of the connection by or with the consent of the party of the second part of a line or telephone with the said switchboard or with the lines of the party of the first part, contrary to the provisions of this agreement, continued for a period of thirty days after
34 written demand for payment, or notice to discontinue such connection given by the party of the first part, or in case the party of the second part shall fail to furnish a service satisfactory to the party of the first part, or to the subscribers under the Rural Telephone Service contract, the party of the first part may, at its option, in addition to the other rights and remedies to which it may be entitled at law or in equity, and which are not waived hereby, terminate this contract, immediately by written notice to the party of the second part, or to those in charge of his office.

The party of the second part further agrees that he will give a bond to the party of the first part in the amount of — Dollars, conditioned for the faithful performance of the terms and conditions of this agreement.

The party of the second part further agrees that upon the expiration or earlier termination of this contract as herein provided, the party of the second part shall deliver in good order to the party of the first part, at its office in —— the switchboard aforesaid and all telephones supplied hereunder.

It is mutually agreed that this contract shall remain in force until the first day of ——, 19—, and thereafter until the expiration of thirty (30) days after written notice of intention to terminate the same given by either party to the other, unless sooner terminated as herein provided.

In Witness Whereof: The party of the first part has caused these presents to be executed, and the party of the second part has hereunto set his hand and seal the day and year first above written.

MICHIGAN STATE TELEPHONE COMPANY,

By —— ——.

—— ——. [L. S.]

—— ——.

—— ——. [L. S.]

Attest:

—— ——, *Secretary.*

Witness:

—— ——.

34*a* Our form for Roadway Contract (Def'ts' Exhibit 2) is as follows:

Roadway Plan.

This Agreement, made this — day of —— A. D. 19—, by and between the Michigan State Telephone Company, a corporation organized under the laws of the State of Michigan, first party, and —— —— of —— Township —— County, Michigan, second party, Witnesseth:

Whereas: The first party owns and operates a telephone exchange at —— County, Michigan, and toll lines connecting said exchange with other exchanges and toll stations throughout the State of Michigan, and the second party operates, or is about to operate a telephone line extending — in —— Township, all within —— County, and wishes to connect its line with the first party's switchboard at —— Michigan. Now it is agreed as follows:

First. The — party agrees to supply at its office in —— as many sets of telephones as may be required by the second party on its line within said —— County, at a rental charge hereinafter stated. Said Telephones to be of the standard furnished by the first party for similar purposes, and said telephones furnished shall be used only upon the lines of the second party, and shall be considered in this contract to consist of one bi-polar receiver, one solidback transmitter, one magneto call bell, one backboard, one initial telephone cord, one initial battery, and one cut-out switch.

Second. The first party agrees to replace without additional charge

to the second party, any telephone leased from the first party that may become defective or unworkable if brought to its office in ——.

Third. The first party agrees to furnish and maintain a metallic circuit extending — from its office in —— to a point not to exceed — on the present pole line of the first party, and to furnish a connection between the parties on the line of the second party with all of the subscribers connected with the first party's exchange in ——.

Fourth. The second party will lease from the first party under the terms of this agreement, all sets of telephones used on the second party's line, and will maintain said line in such manner as to not interfere with nor impair the quality of service furnished over the lines of the first party.

Fifth. The second party agrees to pay for the terminal connection with the first party's switchboard at ——, and for the use of the aforesaid sets of telephones, the sum of seven ($7.00) dollars per annum for each set of telephones connected on its line, payable quarterly in advance at the first party's office in Detroit.

Sixth. The second party will not extend its line in any direction, nor will it during the continuance of this agreement, connect or permit its line to be connected with the lines of any other person, firm or corporation without the consent of the first party obtained first in writing.

34*b* Seventh. The second party agrees to make all necessary repairs to telephones and apparatus furnished it except as hereinbefore provided, and to furnish all renewals of battery for the local transmitter after the first installation.

Eighth. The second party agrees to pay to the first party at its offices in —— not later than the tenth day of each month for the month preceding, the regular tolls for all connections had over the first party's toll lines; it being understood and agreed that the first party will not be required to collect for this service from the second party's subscribers.

Ninth. The second party agrees at the expiration of this agreement by limitation or otherwise, to deliver to the first party at its office in —— all sets of telephones and attachments, leased from the first party, in first-class condition with reasonable allowance for use and natural deterioration.

Tenth. It is mutually understood and agreed between the parties hereto, that the rental to be paid by the second party under this contract, will not be less than — dollars per annum, for each line constructed under this agreement.

Eleventh. In case of failure to carry out any of the provisions embodied herein, and if continued without remedy or repair for thirty days after written notice or demand from either party to the other, said party complaining may terminate this contract by written notice.

Twelfth. It is mutually understood and agreed that this contract shall remain in full force and effect until the first day of ——, 19—, and thereafter until the expiration of thirty (30) days after written notice of the intention to terminate the same given by either party to the other, unless sooner determined as herein provided.

In Witness Whereof: The parties hereto have caused these presents to be executed in duplicate by the proper parties, they being duly authorized so to do, the day and year first above written.

MICHIGAN STATE TELEPHONE COMPANY,

By —— ——.

Attest:

—— ——, *Secretary.*

Witness:

—— ——.

35 In the rural our company owns the switchboard; we generally own the telephones on the line. The rural manager pays us $3 a station for each telephone and a dollar a drop for the switchboard per year. Our relations do not extend beyond the leasing of the telephones and switchboard and collection of the toll. As in the sub-license companies we in the rural, get the entire charge on toll messages, less manager's commission for collection. On rural lines the most remote telephones might be seven or eight miles from the exchange; they may have eight to twenty telephones on the line.

"A. In promoting these companies it is absolutely necessary to form some kind of an association to make the collections and do the work in the construction of the lines, which association is generally continued in the operation of the line, but the contracts are made with individuals between the rural manager and the subscribers themselves."

There may be as many as 15 or 20 roadway lines in an exchange. The association as a rule would be the farmers upon one line. My list of rurals gives the name of the exchange manager, not the association. Our contract for the rural is with the individual manager, not the association. Out of this manager's exchange there may be as high as twenty rural lines, each being an association of itself, with lines owned by the subscribers.

They do not own the telephones—those and the switch-boards belong to us, and represent about one-third the total investment. In our rural exchanges about one-third the property is leased from us. The line over a rural exchange is not a through line, but stops at the last subscriber's house.

There are a number of telephones on practically every line. Their business is not communication between cities, except over our lines, when it becomes our business.

Our business extends all over Michigan with connections all over the United States and Canada. We have exchanges in the principal cities and in some operate the local telephones.

For example, we have in Grand Rapids, 7,000 phones; Detroit, 53,000 to 55,000; Saginaw, 5,000; Bay City, 4,000; Lansing, 2,200; Battle Creek, 2,800 and Marshall, 600.

There are no big cities we don't get into in some way. On the rural lines the number of telephones will average eight or
36 nine to the line. The total rural subscribers, June 30, 1909, in the 55 rurals listed was approximately 5,000.

On these rurals there is no toll business, except that of the M. S. T. Our toll business amounts to a large item. We have from two to six toll lines between all the principal cities, used exclusively for toll purposes. This is something the rural lines have not.

The cost of maintenance is made up by

"A. Assessment I assume, or each man takes cars of his own part of the line in a great many cases on which he lives. He takes care of the line from John Jones' to Tom Simpsons' place, and Tom takes care of it the rest of the way, and some of them are by assessments and others charged so much a year in addition to what they pay for rental to cover that.

Q. What is the character of the line on those rurals, what is the character of the construction?

A. Well, they are generally of such a character as would not look good in a city, but for farm line construction some are very good and some are very poor; some of our rurals are very well built and others are very poorly built, but inasmuch as the property belongs to the farmer himself, it is immaterial to us."

The farmers install their lines themselves with the aid of a lineman that we furnish, they paying his expenses. In many cases they make a "bee" and put the line up, though sometimes they have had the line built and assessed the expense to their members.

The roadway line contemplates the building of farmers' lines,

"* * * by farmers to connect with one of our existing exchanges; they operate and own and maintain the line and we furnish the instruments, or they furnish them, whichever plan they seem to select, and we meet them at the city limits or village limits, or some convenient point, and they receive the same service that our subscribers receive."

Each roadway line is one of these associations that runs in and connects with us instead of with the rural exchange. The roadway lines are generally built by telephone people and the cost assessed against them.

It is assessed against each owner belonging to the association. The roadway line maintains no switchboard or operator; the operation is by us. It is made up of an association of farmers, sometimes incorporated, though that is exceptional. They do no toll business; if they have a toll call it goes over our exchange and is charged to them and they pay the charge the same as any subscriber. Every member on one of these rural lines gets connection through our exchange the same as a city subscriber would with the rest of the city.

There is no way that the roadway companies could do any toll business, or make a charge therefor.

37 "A. They take advantage of that roadway plan in order to secure a low rental, which would be much less than we could afford to give them the service and build lines to reach them. By investing the money in the lines and maintaining the lines themselves, they are able to secure a much lower rate than they would otherwise, and their compensation, what they lose through toll connections would be more than made up in the reduced rental."

At present we own 60 per cent of the telephones on the roadways, last year perhaps 70 per cent. So far as service is concerned, the relation of the farmers on the roadway line to our company is not different than the relation of a subscriber in Grand Rapids, except that they maintain their own line.

The difference between the subscribers of a farmers' roadway and the usual subscriber, is that,

"A. We require these farmers to maintain the line and meet us at certain points, and we also furnish them the instruments at our office, and they are to be maintained by the farmer, except when he sees fit to bring it in the office and have it replaced.

Q. But after the connection is made, after the line is constructed and in, the relations of your company to these people, except the item of maintenance, is the same as your relations to a subscriber in the city of Grand Rapids?

A. Yes, sir.

Q. They call your exchange in the same way and your business is connected in the same way?

A. Yes, sir.

Q. And if they have a toll message the operation is the same?

A. The same way."

38 Q. Your list of roadway companies that are assessed for taxation is three, is it not?

A. Yes, sir.

Q. And those not assessed for taxation is 213?

A. Yes, sir. That has no reference to this record, I took this from a newspaper report.

The telephones on the roadway lines average about eight or nine. Our charge for rental and tolls is against the farmers' association; the contract calls for an increase in the charge for every phone taken and a decrease for every phone taken out, with a fixed minimum. The roadways have no switchboards or anything to do with them, and without our help or that of our competitor, could not carry on business without new installation.

"A. The rural plan is not over seven years old, and very little development was made under it for the first four years, so practically all of the rural business in this state has been developed inside of three and one-half years, and the roadway plan is still newer, practically all of the roadway business has been developed in a year and a half or two years. The plan is new, and as a matter of fact, the contract under which we make that development was drafted inside of two years and a half."

The sub-license "plan is somewhat older, and a little work was done under it as far back as nine years ago, but practically all of this work, practically all of our sub-licenses has been secured since 1905, we will say; since that time practically all of it has been secured."

There were not 50 per cent of these sub-license companies in existence in 1905. Our company has been in business since 1878.

In our contract with the roadway I think we stipulate that they shall not extend their line without our consent. The contract speci-

fies the beginning and the end of their line, and between those two points they could put on any number of telephones that they cared to. That is the way that the contract works out. Where we own the telephone instruments, on the roadway, we take care of it when it is delivered to our office; it is that maintenance and ex-
38*a* pense that we wish to avoid; that allows the roadway plan to come into life. When a telephone gets out of repair they bring it to us to fix.

Our contract with the rural manager requires him to make a certain form of contract with his subscribers. There is a printed form that we prescribe and we fix the rental.

38*b* Form 56. 8-08.

Rural Telephone Service.

Terminal Station Contract.

Station Number —.

The Subscriber (Lessee) requests —— —— (Lessor) to rent him one complete set of telephone instruments, consisting of one solid back transmitter, one bi-polar receiver, one magneto call bell, backboard, cords and battery, also one cut-out switch and protector, furnished to the Lessor by the Michigan State Telephone Company, for use on his premises, and for the purpose of connecting with a telephone line to terminate on a switchboard furnished by the Michigan State Telephone Company, and located on the Lessor's premises, and agrees to pay therefor to the said lessor, the sum of Seven ($7.00) dollars per year, for a term of — years from the date of connection, payable in advance, and semiannually after the expiration of the first year, and this lease shall be understood as renewed for consecutive periods of six months each until terminated by either the lessee or lessor giving one month's written notice to the other, and return of the instruments and apparatus to the lessor.

Terms and Conditions.

The telephone instruments and other devices furnished under this contract for this service are the property of the Michigan State Telephone Company and the American Bell Telephone Company, and are rented to the lessor for the purpose of sublet-ing the same to the lessee, subject to the rights reserved by the Michigan State Telephone Company in its agreement with the lessor with reference to such instruments and devices, and the rental herein specified does not entitle the lessee to any ownership in said instruments or devices nor to retain or use the same contrary to the terms of said agreement.

Under this agreement the lessee is required to erect and maintain, individually, or jointly the necessary poles and wire, to connect with the station of the lessor, and the lessor will only furnish and

maintain the line from the switch-board to the terminal pole designated as number —.

The lessee agrees to use this set of telephones on his premises, and on a line owned by him or owned jointly with others, equipped only with similar telephone devices secured from the lessor; and agrees not to permit any switching device of any kind or character to be connected, either temporarily or permanently with this telephone or the line on which this set of instruments is connected, and owned by the lessee or jointly with others, unless such a device is furnished by the Michigan State Telephone Company through the lessor.

The lessee agrees to make all necessary repairs to telephone and apparatus so furnished at his own expense, excepting as hereinafter provided, and furnish all renewals of battery for the local transmitter after the first installation; also to protect the instrument against destruction by opening the switch placed near the telephone connecting the instrument with the line during the prevalence of lightning storms.

38c The lessor agrees to replace telephones that may become defective or unworkable, if brought to the lessor's premises, without additional cost to the lessee.

The lessor agrees for the amount of rental herein stated to connect any subscribers' line with any other line connected with the same switch-board in the lessor's premises, without additional charge, and will upon request connect any of the lines terminating in the lessor's switch-board with the toll lines of the Michigan State Telephone Company connected with said switch-board, for the purpose of furnishing toll line service, the lessee agreeing to pay the regular tolls for such service had over the Michigan Company's lines at the lessor's premises within thirty days after such service is furnished.

Upon any violation of the terms herein, this contract may be cancelled and instruments taken possession of by the lessor.

The terms and conditions cannot be varied or waived by any representative, or the promise of any canvasser or other person.

——— ———,
Lessee.

——— ———,
Lessor.

Date Signed ———.
Date of Connection ———.

39 Redirect examination by Mr. CAMPBELL:

There are a number of cases where our sub-licensees connect with other rurals or farmers' lines or co-operative companies, that is, they establish a subsidiary system of their own.

There are quite a few such conditions in the state. After making our contract with the rural manager we have no interest in the property as a telephone property. After our part of the plant is put into the telephone property we have no interest in maintaining or operating it. The constructive part—poles, line and wire, generally belong to the association. The manager generally has no in-

terest in that, though he may have membership in one or more of the associations. There are cases where the rural manager has no financial interest in any property connected with his exchange.

Where rurals were assessed, I think with a few exceptions, they were assessed to the manager. In some cases he has collected the tax from the owners of the property; that came through our paying him the proportion our plant represented to the whole. The profit to the rural manager is through the difference in what he pays us and what he collects from the farmers connecting with the exchange and the commission on tolls. I don't know that the owners of the property derive any profit whatever; they derive no
40 rentals.

"A. It all depends on what you consider profit. The profit that each one of these people derive from the operation of their different plans, is in their being able to secure a reduced rental for the service.

Q. Because then of their ownership of the property they are enabled to secure a reduced rental?

A. Yes, sir.

Q. Which, otherwise, if operated by you, and owned by you, they would have to pay?

A. Yes, sir."

Recross-examination by Mr. WYKES:

"Q. And the only pecuniary profit then on one of these rural lines is the profit that the manager derives, I take it? * * *

A. Mr. Campbell asked me practically the same question. I tried to answer it by saying it is a question whether what he saves is a profit, a pecuniary profit, what he saves over and above what he would have to pay under a regular exchange plan. It might be stated right here that that plan was promulgated or planned for the purpose of giving service in communities where the people wouldn't pay regular rates, and the fact that it has been developed so highly indicates that it has served a very useful purpose. Now whether the difference in the price that this farmer would have to pay us for regular exchange service and what it costs him to operate under this plan is pecuniary profit or not, I don't know.

Q. In other words, he gets any dividend he gets, by reason of getting his telephone at a reduced rate, doesn't he?

A. I should say that, yes.

Q. That is true on both the rural and the roadway lines?

A. Yes, sir.

Q. And you don't know of an instance where he gets a money profit out of it?

A. No, except in that way."

I don't see how under the roadway or rural plan many dividends could be paid. They are not devised for that purpose, except for the rural manager.

"Q. So far as the owners, the farmers, who belong to the
41 association and who own the line are concerned, they don't get any dividend except through their low rate for telephone service?

A. No, I don't think they do. * * *

Q. And the manager gets the difference between the $7 that you permit him to rent his phone for and the $3 that he pays you?

A. Yes, sir.

Q. And he gets his commission for making the collections as your agent?

A. Yes, sir.

Q. Whether he gets anything in addition from the association you don't know?

A. No, I don't know, but I imagine that he gets something occasionally for making certain repairs where the farmers neglect to do it themselves.

* * * * * * *

Q. And when you stated this morning that these were profit-making institutions, you meant that the profit was the reduced rate to the farmer in getting his telephone?

A. Yes, sir, and the amount that the manager receives for operating."

In three cases of rurals on our list the subscribers exceed 200, this would make a rental income of $800 a year, besides commission on tolls of $100 or more. That being the gross income, must cover the expense of operation.

"The average rural exchange is located, or the switchboard of a rural exchange is located in the living room of some country grocery storekeeper, and it is operated by his wife and himself, which makes a very nice arrangement."

Cases of income of this size are exceptional, because the number of rural exchanges having more than 200 subscribers is limited.

CHARLES E. TARTE, a witness for complainants.

Cross-examination by Mr. CAMPBELL:

I have been engaged in the telephone business twenty-one
42 years with different companies; have been connected with the Citizens Tel. Co. for twelve years in different positions, being now, and for six years past, general manager. I am familiar with that company's business connections.

"We have four methods of doing business with other companies: First, with companies owning toll lines, with which we connect direct.

Second, with companies and individuals owning exchanges with which we connect direct.

Third, rural companies where the rural companies own their own lines and construction, outside of the corporation limits, and we do their switching, and in some cases furnish telephones, and in other cases the rural companies own the telephones, and

Fourth, other independent companies in the state that we connect with indirectly, that is, by means of the toll lines of other companies."

42*a* Mr. WYKES: I object to it so far as it includes a reference to companies taxed which are not complainants as being im-

material in this case and not proper, because the discrimination claimed is of companies complainant, against companies not taxed—in favor of companies not taxed, instead of against.

42*b* The companies of the first class are the following:
United Home Telephone Co., Ludington.
Southern Michigan Telephone Co., Burr Oak.
Inter-State Long Distance Tele. Co., Detroit.
Benzie County Telephone Co., Benzonia.
Missaukee County Telephone Co., Lake City.
Citizens Telephone Company of Muskegon.
Union Telephone Company, Alma.
Homer Telephone Company, Homer.
Washtenaw Home Telephone Co., Ann Arbor.
Home Telephone Company, Grass Lake.
Citizens Telephone Co., of Jackson.
Swaverly Telephone Co., Kalkaska.
Central Michigan Tele. Co. Lainsburg.
Saugatuck & Ganges Telephone Co., Saugatuck.
Home Telephone Co. South Bend. Ind.
Cass County Telephone Co., Cassopolis.
United States Telephone Co., Cleveland, Oh.

42*c* They are all independent corporations owning, I presume, their own property and equipment.

In the second class we install our toll lines in their switchboards and pay them a commission on all toll business originating at their offices. They own their own lines and equipment and conduct their own business.

42*d* The list of the second class is as follows:
Frank Reames, Howard City.
Amble Telephone Co. Amble.
Dighton Exchange, owned by W. L. Kinney of Marion Hamilton.
Mutual Tele. Co. Hamilton.
Gobleville Farmer Tele. Co., owning exchanges at Gobleville, Bloomingdale and other points in Van Buren county.
Smyrna Telephone Co., Smyrna.
Banfield Telephone Company.
Lake Ann & Oviatt Tele. Co. Oviatt.
Lacey Mutual Telephone Co. Lacey.
East Saugatuck Telephone Co., East Saugatuck.
Grand Ledge Telephone Co., Grand Ledge.
Eaton County Telephone Co., Charlotte.
Springport Telephone Exchange Co., Springport.
Woodland Exchange, owned by F. F. Hilbert, Woodland.
Sunfield Telephone Company, Sunfield.
Springport Co-operative Telephone Company, Springfield.
Eaton Rapids Mutual Tele. Co.
Parma Telephone Co., Parma.
North Parma Telephone Co., Parma.
C. R. Fowler, Jackson, owner of rural lines.
Concord Telephone Co., Concord.

Leighton Telephone Co., Corning.

42e Q. That is they do an independent business of their own?

A. An independent business, yes, both exchanges and toll lines.

Q. And your relation with them is solely in respect to the toll lines?

A. Yes.

The third class, being rural companies, are practically the same as the roadways described by Mr. Berry. These rural companies seem to be a little of everything—corporations, associations or individuals. They do business on a mutual basis.

They assess against their members the cost of operation. I find no individuals in this class.

42f The list of third class is as follows:

Evart:—
North Osceola Tele. Co.
Evart & Muskegon Valley Tele. Co.
Evart Center Line Tele. Co.
Evart & Emerald Lake Tele. Co.
Evart & Emerald Telephone Line.
Osceola Rural Telephone Co.
Gleaner Telephone Co.
Pogy & West Evart Tele. Co.
Hartwick Telephone Co.

Zeeland:—
Drenthe Ind. Telephone Co., Drenthe.

Tustin:—
Town Corners Tele. Co.
Lake & Osceola Telephone Co.
Maple Ridge Tele. Co.
High Bridge Branch Maple Ridge Co.

Morley:—
Deerfield Rural Tele. Co.
Ætna Telephone Co.
Little River Tele. Co.
North Winfield Tele. Co.
Cyclone Telephone Co.

Hastings:—
County Center Telephone Co.
Hastings & Carlton Co-Oper. Tele. Co.
Irving Tele. Co.
Rutland Telephone Co.
E. Irving & Hastings Tele. Co.
Rural Co-Opr. Telephone Co.
So. Rutland Centre Tele. Co.
Lake View Tele. Co.
High Street Telephone Co.
State Road Tele. Co.
West Rutland Tele. Co.
Northwest Rutland Tele. Co.
Baltimore Centre Tele. Co.
Fall Creek Tele. Co.

Schultz Tele. Company.
Farmers Mutual Tele. Co.
East Hope & West Baltimore Tele. Co.
Dowling & Hastings Tele. Co.
Star Telephone Co.
Centre Road Tele. Co.
Battle Creek Telephone Co.
No. Baltimore Telephone Co.

White Cloud:—
Big Prairie & Everett Tele. Line.
White River Line.
42*g* Everett Centre Tele. Co.
Wilcox Telephone Co.
Town Line Telephone Co.
Goodwell Telephone Co.
Diamond Loch Tele. Co.
White River Valley Tele. Co.

Nashville:—
Maple Grove Rural Tele. Co.
West Maple Grove Tele. Co.

Fremont:—
United Telephone Company.
Village Hill Telephone Co.
Line 254. (No name given to this group.)
Line 256. (No name given to this group.)

Leroy:—
Leroy Twp. Telephone Co.
Dewing Telephone Co.
Cold Water Telephone Co.
Sawyerville Tele. Co.
Leroy Rural Telephone Co.
Randolph Telephone Co.
Rose Lake Telephone Co.

Manton:—
Farmers Union Telephone Co.
Gilbert Telephone Company.

Newaygo:—
Marengo Prairie Telephone Company.

Luther:—
Star Mutual Tele. Co.
Ellsworth Telephone Co.
Luther & Hoxeyville Tele. Co.
Lake Region Telephone Co. of Peacock.

Trufant:—
Farmers Ind. Tele. Co.

Mason:—
Aurelius & Vevay Tele. Co.
Okemos Telephone Co., Okemos.

Harvard:—
Black Creek Farmers Tele. Co.

McBain:
Clam Union Township Tele. Co.
Richland Twp. Telephone Co.
Hersey:—
North Hersey Telephone Co.
Northport:—
Leelanau Farmers Mutual Co.
Kingsley:—
North Paradise Telephone Ass'n.
East Paradise Telephone Ass'n.
Cadillac:—
Lucas Telephone Co.
Farmers Clam River Tele. Co.
Clam Lake Rural Tele. Co.

42*h* The companies of the fourth class are independent organizations usually corporations. A great many of them are the larger companies. These companies do substantially the same kind of business, transact it in the same way that telephone companies generally do.

The list of companies in the fourth class is as follows:
Adrian Telephone Co., Adrian.
Quincy Telephone Co., Quincy.
Reading Telephone Co., Reading.
Wayne County Telephone Co., Plymouth.
Oakland County Tele. Co., Pontiac.
Chambers Telephone Co., Fostoria.
Shiawassee & Genesee Mutual Tele. Co. New Lothrop.
Houghton Lake Telephone Co., Houghton Lake.
Leota Telephone Co., Leota.
Monroe County Telephone Co. Dundee.
Sandusky Tele. Co., Sandusky.
Leslie Telephone Co., Leslie.
Mutual Telephone Company, Attica.
Blissfield Telephone Co., Blissfield.
Fremont Farmers Tele. Co., Croswell.

43 Cross-examination by Mr. WYKES:

The principal business of the Citizens Telephone Co. is in Grand Rapids and western Michigan. It has 10,000 phones in Grand Rapids, and reaches with its lines numerous cities, having connections of four or five wires between them.

Its business on its own lines reaches practically all over western Michigan and through the use of other lines all over the southern peninsula. It started business in 1896, and has been in operation continuously since. In the way of giving telephone service it is very similar to the M. S. T.

The larger companies, including all of the complainants, are about the same in that respect; each is organized as a corporation.

The Amble Tel. Co. is an exchange owned principally by two men. They own the lines and equipment, rent their telephones at an annual rental and operate for profit.

43*a* The Dighton Exchange was owned by an individual.

The Gobleville Farmers' Tel. Co. is a farmers' mutual company, composed of an association of farmers, organized to get cheap telephone service without dividends.

The Leighton, East Saugatuck and Lake Ann & Oviatt companies are mutual propositions, organized to get cheap telephone service, the same as the Gobleville.

The Eaton Rapids Mutual Tel. Co. I believe, is mutual.

The Amble Tel. Co. had two months' operation in 1909.

The Gobleville Farmers' own their own entire system.

The Leighton Company operated as a mutual company, but rented telephones to a few subscribers. They own their own switchboard and pay a man to run it. The general purpose is to give telephones at low rate to subscribers, though in a few cases, purely exceptional, they rent telephones.

The East Saugatuck Co. is a purely mutual proposition, doing business to get cheap service. All I know about the Eaton Rapids and Parma companies is that we connect with them. I don't know that they are not reported under other names and on the tax list under those names.

Most of the companies in my third class are of the character of Mr. Berry's "roadway" companies, being where the farmers own the line outside the corporation limits, and some one else owns and operates the switchboard.

For our list the Citizens Telephone Company operates the switchboard. The companies in my third class different from the roadway proposition are:

Drenthe Independent Tel. Co.

Hartwick Tel. Co., (assessed as Osceola Rural).

44 United Tel. Co. of Fremont.

The latter is a combination of roadway companies.

With these exceptions the others are purely mutual companies, whose only profit is in reduced cost of telephones.

"The Drenthe Independent Telephone Company does business on a mutual basis. They have a switchboard of their own, and central office of their own at Drenthe, some ten or twelve miles out of Zeeland, and have entire management of the plant themselves. Then they have a trunk line running from Drenthe to our switchboard at Zeeland, and by paying us a certain price per year, get service with all of our Zeeland exchange subscribers."

The Drenthe is similar to Mr. Berry's "rurals," it is a purely mutual proposition; I think it is not a profit making institution.

The United Telephone Co. of Fremont is similar to the "rural," it is purely a mutual, to secure cheap telephones.

I think I explained that before, I am not sure. Those companies (of the fourth class) are reached by means of a toll line of a third or a fourth company, companies in between them and us, and we reach them over these toll lines, and all connections that originate on our system and go to them, we retain 25 per cent. commission. These companies are practically the same thing as those on the first list, except they are not in direct contact with our company. They own

toll lines and exchanges in most cases; simply a company that we reach under the lines of some other telephone company. I see one on top of the list that is probably reached by the Bell Company now, they were not reached a year ago. A year ago we had an arrangement with them through what we call our Traffic association; we have a State traffic association, and under our arrangement with them whenever toll business originates on the lines of any of these companies and passes over the lines of another company, the report of this toll business is sent to the Traffic Association which measures the mileage that it goes over each company's line, and after taking out the 25% commission, pays to each company its proportionate
44a share of that haul. It is simply a clearing house.

Q. You haven't any specific arrangement other than that you belong to the same association?

A. A year ago we didn't, but we have now. They are mostly under a leasing proposition now. Their lines are leased to this traffic association for this purpose, for the purpose of carrying on what we call interchange business.

Q. The traffic association is composed of what; what is the principal influence in it?

A. It is a corporation. Stock is held by individuals, although these individuals in most cases represent telephone companies, in all cases the Traffic association simply acts as a clearing house the same as a clearing house for a bank or for railroads, to see that each company gets its proportionate share of the mileage haul.

Q. Stock is held principally by telephone companies that are taxed, I take it?

A. Yes.

Q. By the larger companies?

A. By the individuals repre-enting those companies.

Q. For the companies?

A. For the companies.

I am not familiar with the Quincy Telephone Co. and do not know whether it operates for profit or not.

45 The Houghton Lake Tel. Co. is a stock company, organized for profit, I understand.

The Leota Tel. Co. is individually owned and organized for profit.

The Quincy Telephone Co., may be listed in either Exhibit "A" or "B," under some other name.

Our contracts with the rural companies are between the subscribers or a group of subscribers of an organization and our company.

As a matter of giving telephone service, the mutual companies are engaged the same as we are.

"A. Practically the same way, yes, sir.

Q. But their arrangements with their subscribers are different?

A. Well, those companies that are organized for the purpose of getting service at a low rate and not make any profit don't do business the same way as we do.

Q. None of them?

A. Why, they cannot. They are organized for the purpose of giving service at a low price and not making any profit, it is physically

impossible for them to do business as we do because we are organized for the purpose of making profit.

Q. They don't collect money for the purpose of paying dividends as your company does?

A. Not that kind of a company don't, no, sir."

"A. I will have to answer it the same way so as not to get myself misunderstood: A company that is organized for the purpose simply of getting free service or cheap service for its subscribers and without any intention of making profit, is not doing business, as far as the financial element is concerned, in the same way that we are."

Redirect examination by Mr. CAMPBELL:

46 Practically, so far as the subscriber knows, the business is conducted in the same sort of way; he rings a bell and gets the central office and talks with the party he asks for. The business is conducted practically over the same kind of plant, some little difference in the specifications, the kind of wire, we use or something of that kind. All the difference I can see is that one company has one kind of an organization and another company has another.

Some of the companies carrying on rural business are individuals, some corporations and some mutual associations. All of the lines in the second class carry on their business so far as service is concerned in practically the same manner as other telephone companies the only difference being that the gross receipts of one are less than those of another. (Objection that conclusion of witness was called for.) Some of these mutual companies compete with our company.

The result of the competition has been that we have lost our subscribers and they get the benefit of our service by their mutual organization at lower rates than we formerly charged them.

I find two companies in the list of fourth class that are not assessed: the Houghton Lake and Leota Telephone Companies; there may be others.

The roadway companies do no toll service, except over our lines. We get the entire toll charges. There is no competition with us in toll business; they could not, with their present equipment and method of operation, do toll business.

46*a* W. J. MELCHERS, a witness for complainants.

Direct examination by Mr. CAMPBELL:

I have been in the telephone business fourteen years, with various companies; am, and have been for seven years, general manager of Union Telephone Company.

It occupies ten counties in the central part of the state. We do business with other companies the same as the Citizens Company.

The companies with which we do business can be classified as follows:

"The first class being such corporations or individuals or associations owning exchanges and toll lines; the second class being individuals or associations or corporations owning an exchange only, without any toll line. This may constitute a number of rural lines added together to form an exchange unit; in the classification of ex-

change unit I would include all that own their own central office equipment, do their own switching; the third class would be co-operative or mutual lines, incorporated or non-incorporated whose sole object is to receive cheaper telephone service by means of owning their own line: the fourth class would be other companies similar to the first class heretofore mentioned which we receive through another company."

At the present time there are eight companies of the first class of which seven are operated for a profit and the 8th one not. The 8th is an incorporated mutual company, owns toll lines and exchanges. Those in the first class are the Citizens Telephone Co., the United States Telephone Co., Cleveland, Ohio; the Interstate long distance telephone Company; the Saginaw Valley Telephone Company; the Central Michigan Telephone Company; the Leota Telephone Co.; the Houghton Lake Telephone Co.; the Shiawassee & Genesee Mutual Telephone Company. Seven of these are incorporated and the eighth is not. They are assessed, with the exception of the Leota Tel. Co. and the Houghton Lake Tel. Co.

Mr. WYKES: I object to the question and all reference to these companies that are taxed but not complainants in this case, for the reasons heretofore given.

The business this class of company does is substantially of the same character.

Of the second class, some are incorporated and some not; some are organized for profit, others are mutual, the purpose being to secure cheaper telephone service.

47 We terminate our toll lines on their switchboards, giving them toll outlet, and allowing them a certain percentage on originating toll business for their collections.

They own their own lines and equipment and conduct their own local business. We have nothing to do with that.

A year ago there were 9 in this class, now 12.

I have a list of them: The Farmers' Exchange Telephone Company of Vickeryville, Gaines Farmers Mutual Telephone Co. Pine River Telephone Association, Blanchard Telephone Co., Chapin Farmers Mutual Telephone Co., Crystal Telephone Co., Farmers Mutual Telephone Co. of Chapin, Home Telephone Co. of Palo, Palo Telephone Co. They are all in the taxed list except the Crystal Telephone Co. which is a company not organized for profit.

These companies do business in substantially the same manner so far as the service is concerned. The difference is that some are organized for profit, others, not. They are organized to give local service. The service itself is physically conducted in the same manner in each.

Four of the companies in this list are mutual and taxed.

(Objection to testimony as to taxed companies, not complainants, is renewed from time to time through the record, and will not be repeated through this record.)

Of the third class of companies, of which there are about 100, we have in each case a contract with the organization or association.

They are voluntary associations, except approximately 20 are incorporated.

(Objection that as to the corporate character the record is the best evidence.)

Two of the companies in this list are taxed: The Farmers Telephone Co. of Coe and the St. Charles Roadway Tel. Co. The list of companies falling within this third class is as follows:

48	Name.	Character.	Organization.
	Addition to Rock Lake Ind. Telephone Co.	Roadway	Not incorporated
	Almy and Lakeview Telephone Company	Roadway	Not incorporated
	Ashley Rural Telephone Company	Roadway	Not incorporated
	Bannister Mutual Telephone Company	Roadway	Not incorporated
	Barryton Rural Telephone Company	Roadway	Inc. Mar. 31, 1909
	Beaver Creek Independent Telephone Co.	Roadway	Not incorporated
	Bissell Independent Telephone Company	Roadway	Not incorporated
	N. H. Blake	Roadway	Not incorporated
	Bloomfield Center Independent Telephone Co.	Roadway	Not incorporated
	Bluff Creek Telephone Company	Roadway	Not incorporated
	Borton Independent Telephone Company	Roadway	Not incorporated
	Breckenridge Mutual Telephone Company	Roadway	Not incorporated
	Brockway Independent Telephone Company	Roadway	Not incorporated
	Brooks Independent Telephone Company	Roadway	Not incorporated
	Cato-Winfield Independent Telephone Co.	Roadway	Not incorporated
	Cedar Valley Telephone Company	Roadway	Not incorporated
	Carl P. Charles & Wm. A. Johnson	Roadway	Inc. Jan. 22, 1908
	Chippewa Rural Telephone Company	Roadway	Not incorporated
	Clifford Lake Ind. Telephone Company	Roadway	Not incorporated
	Coldwater Rural Telephone Company	Roadway	Not incorporated
	County Line & Freeland Ind. Telephone Co.	Roadway	Not incorporated
	Curtisville Rural Telephone Company	Roadway	Not incorporated
49	Day Center Independent Telephone Co.	Roadway	Not incorporated

Name.	Character.	Organization.
Douglas & Stanton Telephone Company	Roadway	Not incorporated
East Bethany Farmers' Telephone Company	Roadway	Not incorporated
East Geneva Independent Telephone Co.	Roadway	Not incorporated
East Ferris Union Tel. Co.	Roadway	Inc. Aug. 19, 1909
Edenville Telephone Company	Roadway	Not incorporated
Edgar Rossman Independent Telephone Co.	Roadway	Not incorporated
Enterprise Independent Telephone Co.	Roadway	Not incorporated
Enterprise Telephone Company	Roadway	Not incorporated
Eureka Telephone Company	Roadway	Inc. June 16, 190
Farmers Telephone Company of Coe	Roadway	Not incorporated
Frost Stanton Independent Telephone Co.	Roadway	Not incorporated
Fulton Independent Telephone Company	Roadway	Not incorporated
Gilmore Rural Telephone Company	Roadway	Not incorporated
Gladwin Road Telephone Company	Roadway	Not incorporated
Graffville Independent Telephone Co.	Roadway	Not incorporated
Grape Growers Independent Telephone Co.	Roadway	Not incorporated
Gravel Ridge Independent Telephone Co.	Roadway	Not incorporated
Greenwood Mutual Telephone Company	Roadway	Not incorporated
Hinton Mutual Telephone Company	Roadway	Inc. Mar. 16, 1909
Hockstra Independent Telephone Company	Roadway	Not incorporated
Ingersoll Rural Telephone Company	Roadway	Not incorporated
Iron Clad Independent Telephone Company	Roadway	Not incorporated
Isabella Mutual Telephone Company	Roadway	Not incorporated
Jackson Street Telephone Company	Roadway	Not incorporated
Jasper Telephone Company	Roadway	Not incorporated
Jonesfield Independent Telephone Co.	Roadway	Not incorporated
Kirby Lake Independent Telephone Company	Roadway	Not incorporated

Name.	Character.	Organization.
Lakeside Independent Telephone Company	Roadway	Not incorporated
Larkin Rural Telephone Company	Roadway	Inc. June 2, 1905
Littlefield Rural Independent Telephone Co.	Roadway	Not incorporated
Lumen & Curtis Telephone Company	Roadway	Not incorporated
Maple Grove Independent Telephone Co.	Roadway	Not incorporated
Maple Valley Telephone Company	Roadway	Not incorporated
McBride & Entrican Telephone Company	Roadway	Not incorporated
Mecosta Mutual Telephone Company	Roadway	Inc. Aug. 27, 1907
Monitor Independent Telephone Company	Roadway	Not incorporated
North Bradley Independent Telephone Co.	Roadway	Not incorporated
North Cato Independent Telephone Company	Roadway	Not incorporated
North Perrinton Mutual Telephone Co.	Roadway	Not incorporated
North Shade Farmers' Telephone Company	Roadway	Not incorporated
Newark & Fulton Ind. Telephone Co.	Roadway	Not incorporated
Perrinton South Section Line Telephone Co.	Roadway	Not incorporated
Petersville Independent Telephone Co.	Roadway	Not incorporated
Pine River Independent Telephone Co.	Roadway	Not incorporated
Pine River Independent Telephone Co.	Roadway	Not incorporated
Pleasant Hill Independent Telephone Co.	Roadway	Not incorporated
Quick Independent Telephone Co.	Roadway	Not incorporated
Rathbone Independent Telephone Company	Roadway	Not incorporated
Redstone Telephone Company	Roadway	Not incorporated
Remus & Titus Independent Telephone Co.	Roadway	Not incorporated
Rick Lake Independent Telephone Company	Roadway	Not incorporated
Salt River Telephone Company	Roadway	Not incorporated
Sherman City Telephone Company	Roadway	Not incorporated
Sidney Telephone Company	Roadway	Not incorporated

Name.	Character.	Organization.
Southeast Wheeler Independent Telephone Co.	Roadway	Not incorporated
South Fulton Rural Telephone Company	Roadway	Not incorporated
South Hinton Telephone Company	Roadway	Not incorporated
Starr Independent Telephone Company	Roadway	Not incorporated
Stone Telephone Company	Roadway	Not incorporated
St. Charles Roadway Telephone Company	Roadway	Inc. April 14, 1909
Sumner Center Independent Telephone Co.	Roadway	Not incorporated
Sumner No. 1 Rural Telephone Company	Roadway	Not incorporated
Surrey Independent Telephone Company	Roadway	Not incorporated
Town Line Telephone Company	Roadway	Not incorporated
Town Line Independent Telephone Company	Roadway	Not incorporated
Town Line & Lakeview Inc. Telephone Co.	Roadway	Not incorporated
G. S. Townsend	Roadway	Not incorporated
Washington Center Mutual Telephone Co.	Roadway	Inc. July 29, 1907
Wambolt District Telephone Company	Roadway	Not incorporated
West Burns Mutual Telephone Co.	Roadway	Inc. Mar. 13, 1906
West Ferris Independent Telephone Company	Roadway	Not incorporated
West Sidney Telephone Company	Roadway	Not incorporated
West Sumner Telephone Company	Roadway	Not incorporated
Woodman Independent Telephone Company	Roadway	Not incorporated
Wright Independent Telephone Company	Roadway	Not incorporated
Wise Mutual Independent Telephone Co.	Roadway	Not incorporated

51 Cross-examination by Mr. WYKES:

The Union Tel. Co. has been in continuous operation since 1898; it reaches into ten counties with exchanges in a number of cities; it has approximately 10,000 phones.

I know nothing of the business of the Leota Tel. Co., except that the woman who owns it makes a fixed charge for all messages over the line. She gets her mileage proportion. Some of the business terminates on her line, and some goes over it to points beyond. The same is true of the Houghton Lake Co.

The Crystal is a mutual company similar to the roadways, though larger; it is an aggregate of several roadways. They are not in business for profit, except as they derive it from low prices of phones.

The third class are practically all mutual roadways, of the character referred to by Mr. Berry.

"These almost all do business by assessing their members the necessary amount for maintenance and telephone rental, in case they rent telephones from us, and maintain their own lines all the way through, terminate on our switchboard."

They are not dividend earning institutions, except G. S. Townsend of Six Lakes is in it for money, and N. H. Blake, I think, is in it for profit, though I don't know. He is not on Exhibit B.

The fourth class comprises all companies which we reach over the line of some other company; everybody we reach in any way.

The earnings of these companies are variable; one year they might be above and another below, $500. Our collections are made from the association.

The association's officer collects and remits to us for the rent of instruments and our switching service. In some instances they own the phones, in others they don't; 35% we furnish phones for.

They own the lines themselves, which are constructed under the same arrangement as the M. S. T. roadways, by assessing to each member his pro rata share. There is no way of these roadways doing toll business.

By Mr. CAMPBELL:

The Crystal Co. reported cost of property $200, and number of phones as 83. Their property would average at least $40 a telephone. I base this on my knowledge of what any plant of that character would cost. They own a line from Crystal to Carson City, but derive no toll revenue from it. They pay us for connecting it with our Carson City exchange and receive Carson City service for annual fee per phone.

52

In my judgment the Crystal Tel. Co. plant cost approximately $3,000; they own their entire equipment and lines.

W. J. BERRY, recalled.

Direct examination by Mr. CAMPBELL:

The companies in my lists of taxed and untaxed are operating under substantially the same conditions. There are exceptions to the general plan, both as to taxed and untaxed companies.

They are doing the same kind of business under similar conditions.

All the "rurals" on account of their contractual relations with our company of necessity do the same class of business. The business of the roadways is practically all alike, except as to the character of organization of the company. In the roadway, so far as the service and practical conduct of the business are concerned, there are no differences between the business of a corporation or mutual company, they are practically all the same so far as the character of the service and method of carrying it on is concerned with the exceptions appearing in my former testimony.

"Mr. CAMPBELL: That stipulation is all right, is it?

Mr. WYKES: Yes.

In these cases it is hereby stipulated, that the reports of those companies, associations and individuals reporting pursuant to the provisions of Act 49 of the Public Acts of 1909, relating to telephone companies which have been, or may be, filed with the State Board of Assessors, whether as original or as supplemental reports called for by the board, shall be deemed, when introduced, to be prima facie evidence of the facts and things therein stated, but shall be subject to proper objections as to their relevancy or materiality.

It is further stipulated that the compilations of said reports marked Exhibits A and B for complainants, and Exhibits C and D for defendants, shall be considered and deemed correct compilations and tabulations of the figures, facts and things set forth in said reports, and that such tabulations may be used upon the hearing in said causes, in the place of the original reports.

It is, however, understood that the admission in evidence of such reports, without objection to their competency as proof, is not a concession, on the part of the defendant, that companies, associations and individuals reporting to the State Board of Assessors are telephone companies which operate telephone lines in the same manner as do, or operate property of the same character as is, that belonging to and operated by the complainants; nor will this stipulation be treated as a concession that the cost of production stated in said reports represents the value of the property of the company or institution reporting in 1909, or is the value at the present time."

52*a* I have charged of the relations between our companies and am in general familiar with the character of the properties of those companies.

On June 30, 1909, the number of subscribers of these several companies was 37,000 or 38,000.

The number of telephones operated by our connecting companies, not assessed, was on June 30, 1909, about 7,500. I have prepared a list showing companies that operate in connection with the M. S. T. giving their names, the number of telephones and amount of M. S. T. property in their possession.

In a general way I have estimated the value of these companies' property by a certain amount per telephone, that being the nearest I could determine as to the value. From my experience $30 a telephone would come pretty close to it, including all the property; in some cases that would be small.

Mr. WYKES: I want to make an objection to the question and a motion to strike out the answer on the ground that the witness has not shown sufficient familiarity with these properties, nor sufficient qualification to place a value on them, and on the ground that in his previous testimony he expressly states that he did not have a detailed knowledge of the character of all of these properties.

I have seen quite a number of the plants of the various forms of companies and have had experience in the building and construc-

tion of lines somewhat; am familiar with the average cost of telephone lines, such as are generally constructed throughout the state.

Mr. WYKES: I want to add to the objection this: that the question of value for taxation is not a question of cost of construction, but is a question of value, based on the cash value, for sale purpose, and for income producing purpose, and object to the witness' qualification because he has shown no familiarity with the cash value for either of those purposes.

52*b* Our cost for the same kind of construction is nearly double my estimated figure. We have bought or sold a large number of farmers' lines, and to that extent I am familiar with the sale value. My estimated average figure is less than we ever purchased any line at. The figure of $30 a telephone is a conservative average cost of telephones of that character.

(Exhibit C being the list of exempted companies connecting with the M. S. T. with estimated costs, etc., produced.) The third column is my estimate of the value of the plant made in the manner stated; the fourth column is the amount of the property of the M. S. T. in those plants.

Mr. WYKES: I object to it for the reason stated in the objection that is already detailed, and for the further reason that the witness has shown no familiarity with the specific properties which he attempts to value.

Exhibit C set out. This shows estimated cost as follows:

"Sub-license companies:

Estimated value of property	$85,946
Rural exchanges, value of property	36,590
Roadway companies, value of property	88,518
	$211,054"

This includes M. S. T. property as follows:

"Sub-license companies	$2,856
Rural companies	11,395
Roadway companies	17,514
	$31,765"

52c Sublicense.

Company.	No. subs.	Value.	M. S. T. Property.
Ashley Home Tel. Co.	45	1,350	
Brooklyn Sub. Assn.	600	12,000	
Bridgeman Tel. Co.	29	983	403
Citizens Tel. Co., New Troy.	70	2,300	200
Bates, M. A.	116	4,060	
Citizens Co., Harrisville	53	2,855	
East Shore Tele. Co.	32	1,064	424
Fulton Mutual Co.	14	585	305
Hills Rural Tele. Co.	25	981	231
Hempstead, S. A.	67	2,010	
Kinney, R. C.	100	2,612	112
Lyndilla Tele. Co.	145	4,350	
Meade Tele. Co.	70	2,100	
Mueller, Wm. C.	13	551	291
Manitou Beach Tele. Co.	10	270	70
Moore, A. J.	13	351	91
Middleton Farmers Co.	63	1,890	
Munith Tele. Co.	304	7,600	
Pinconning Mut. Tele. Co.	65	2,069	119
Stafford, W. R.	9	243	63
Seneca Exchg	90	2,700	
Samaria Farmers	107	3,210	
Taylor, F. H.	60	2,000	200
Wisconsin Land & Lbr. Co.	11	297	77
Wallace Tele. Co.	11	490	270
Burr Oak Mut. Tel. Co.	65	2,265	
North Adams Tel. Co.	400	12,000	
Riga Farmers Co.	64	1,920	
Farmers Ind. Tel. Co.	75	1,500	
Holloway Tele. Co.	128	1,200	
Cement City	205	5,000	
Portland Tele. Co.	147	3,115	
Smith & Laird	2	125	
	3,208	$85,946	$2,856

52*d*

Rural.

Name.	No. subs.	Value.	M. S. T. Property.
Chas. Angerer	41	1,120	300
Allen, Arthur	32	940	300
Budge, W. M.	20	600	200
Brown, Chas. D.	57	1,640	500
Briggs, Lester	80	2,300	700
Campbell Bros.	120	2,800	400
Conklin, F. J.	40	1,200	400
Clark, J. H.	8	360	200
Covey, Wesley B.	51	1,520	500
Cork, W. H.	63	1,860	600
Densmore, E. F.	15	485	185
Edwards, J. T.	43	1,575	500
Eby, Christian	44	1,280	400
Eaton, O. W.	39	1,100	320
Forbes, Elmer	37	1,040	300
Gilhouse & Zorn	58	1,660	500
Gowing, J. Angus	10	400	200
Horen, J. S.	49	1,480	500
Joyce, Geo. V.	59	1,780	600
Lardie, John	44	1,280	400
Niedermeier, A. E.	41	1,220	400
Rau, S. M.	23	620	160
Schaub, Simon	30	900	300
Snyder, John	22	740	300
Seegmiller, Adam	97	2,790	850
Winslow, R. L.	27	890	350
Weiport & Meyer	33	990	330
Coe, T. D.	102	2,740	700
	1,295	$36,590	$11,395

	Name of company.	No tele's.	Leased from M. S. T.
52e	Arcada Mut. Tele. Co.	11	11
	Alaiedon & Mason	13	..
	Adair Roadway Co.	16	16
	Arcadia Tele. Co.	21	21
	Boyce, A. A.	4	4
	Bammel Roadway Co.	11	11
	Baldwin, M. D.	19	19
	Bridgewater Center Tele. Co.	20	20
	Bridgetown Roadway Co.	6	6
	Big Rapids-Lilley & Bitely Co.	32	32
	Big Rapids & Grant Co.	52	52
	Bethany Telephone Co.	38	38
	Bassett Roadway Co.	10	10
	Belle River Roadway Co.	9	9
	Bar Lake Roadway Co.	5	5
	Belle River Mills Tel. Co.	16	16
	Battle Point Tele. Co.	8	8
	Big Hand Road Tel. Co.	11	11
	Bradford Roadway Co.	11	11
	Bowman Roadway Co.	14	14
	Crystal Lake Roadway Co.	25	25
	Colfax Tele. Co. #1	10	10
	Colfax " " #2	9	..
	Cadillac & Pine River Tele. Co.	42	42
	Cheney Roadway Company	10	10
	Custer Peach Belt Tel. Co.	18	18
	Cavanaugh Lake Te-. Co.	8	..
	Crane, C. L.	19	19
	Ceresco Tele. Company	44	44
	Cowing Line	6	..
	China Roadway Company	15	15
	Custer Telephone Company	15	15
	Clark Roadway Company	14	14
	China St. Clair Rdy. Co.	7	7
	Curtisville Telephone Co.	25	25
	Coldwater Roadway Company	10	10
	Colonville Roadway Co.	10	..
	Daggett-Nathan-Faithorn Co.	20	20
	East Town Line Rdy. Co.	15	15
	Eddy Ed.	10	10
	East Mitchell Rdy. Co.	9	9
	Eden Telephone Company	15	15
	Emmett Telephone Company	20	20
	Etchell & Mason Tele. Co. #1	8	..
	" " " " " #2	11	..
	Elm Grove Telephone Co.	13	13
	Elba " "	15	15
	" Centre " "	12	12
	East Freesoil Tele. Co.	10	10
	Eastwood Roadway Company	8	8

Name of company.	No. tele's.	Leased from M. S. T.
East Gilmore Rdy. Co.	9	9
Fairview Roadway Co.	8	8
Franklin & Cambridge Tel. Co.	12	12
Franklin-Manchester Tel. Co.	11	11
Flint River Tele. Co.	19	19
Farmers Mut. Tele. Co.	27	..
Five Points Tele. Co.	8	8
Francisco Tele. Co.	28	..
Farmers' Mut. Tele. Co.	9	9
Farmers " " "	10	10
Forest Home Tele. Co.	6	6
Guetler Roadway Co.	16	16
Gladwin-Nolan Tele. Co.	25	..
Gladwin Co. Tel. Co.	85	..
Green Oak Tele. Co.	17	17
Groveland Grande Tele. Co.	15	15
Gratiot Roadway Co.	10	10
52*f* Grant Twp. Roadway Co.	3	3
Gunplain Roadway Co.	6	6
Genessee Roadway Co.	9	9
Grand River Valley Rdy. Co.	5	..
Gaswell Roadway Company	15	15
Hand Roadway Company	14	14
Hoadley, R. P.	10	10
Halliday, H. H.	10	10
Husel Roadway Company	3	3
Hunters Creek Tel. Co.	11	11
Holly Centre Tel. Co.	10	10
Hitchcock, R. H.	8	8
Herrick Roadway Co.	15	15
Horton Bay Tel. Co.	9	9
Ironwood Rural Tel. Co.	16	16
King Roadway Co.	12	12
Lazerlere, C. H.	12	12
Lancaster Tel. Co. #1	11	11
" " " #2	12	12
Lester Tel. Co.	16	..
Leoni Central Tel. Co.	24	..
Lapeer Twp. Central Co.	12	12
" View Tele. Co.	10	10
Lone Pine Tel. Co.	14	14
Manchester Rdy. Co. #71	13	..
" " " #153	8	8
" " " #155	9	9
" " " #72	13	13
" " " #76	12	12
Mirror Lake Te. Co.	14	14
Mayfield-Deerfield Tel. Co.	14	14
Mill Roadway Co.	20	20
Martin, Wm.	17	17
Marshall, Bert	10	10

Name of company.	No. tele's.	Leased from M. S. T.
Mathews, P. W.	9	9
Munith-Grass Lake Tel. Co.	16	16
Marsh Road Tel. Co.	17	17
Mitchell Road Tel. Co.	10	10
Mt. Vernon Rdy. Co.	13	13
Martin Roadway Co.	7	7
Mason & Dexter Rd. Co.	10	..
Mayfield Tel. Co.	18	18
Martin Clarence	9	9
Millville Tel. Co.	24	24
Maple Grove Te. Co.	11	11
Michigan Ave. Roadway Co.	9	9
Miles, Albert	9	9
Mizner Tele. Company	13	13
Monta Crum Tel. Co.	8	8
Milan Roadway Co.	7	7
Mayfield Centre Tel. Co.	18	18
North Star Tel. Co.	7	7
North Grant & Hersey Tel. Co.	17	17
North Bethany Tel. Co.	31	31
Noone, J.	13	13
North Berlin Tel. Co.	11	11
Northwestern Rural Tel. Co.	45	45
North Custer Tele. Co.	10	10
Northwestern Tel. Co.	11	11
Norvell & Manchester Tel.	15	15
North Marshall Tel. Co.	16	..
52*g* North Rose Roadway Co.	5	5
Northeast Wheeler Tel. Co.	10	10
North Gilmore Rdy. Co.	7	7
No. Flushing Rdy. Co.	20	20
Northwest Bethany Tel. Co.	20	32
Ovid Mutual Telephone Co.	131	..
Oxford Rural Tel. Company	8	8
Onekema Telephone Company	13	13
Owl Telephone Company	6	6
Oregon Central Rdy. Co.	11	11
Perry, J. E.	10	10
Puttigott Tel. Co.	11	11
Partello Tele. Co.	42	42
Phillips Roadway Co.	11	11
Park Ave. Roadway Co.	7	7
Powell, J. C.	10	..
Perryville Tel. Co.	13	13
Porter Twp. Roadway Co.	12	12
Pine Creek Roadway Co.	11	11
Quarter Line Rdy. Co.	11	11
Riverton Central Tel. Co.	9	9
Riverside Telephone Co.	14	14
Ranney Telephone Co.	14	..

Name of company.	No. tele's.	Leased from M. S. T.
Range Line Tele. Co.	13	13
River Raisin Tele. Co.	12	12
Rose Centre Tel. Co.	13	13
Ray " " "	20	..
Richardson Roadway Co.	10	10
River Roadway Co.	8	8
Sheridan Roadway Co.	13	13
Summit Tele. Co.	7	7
Springvale Tel. Co.	9	..
So. Bethany Telephone Co.	21	21
" Rose Telephone Co.	14	14
State Road Tele. Company	12	12
Sugar Grove Tele. Company	12	12
So. Burns Telephone Company	11	11
" Manchester Line #70	11	11
" " " #73	11	11
" " " #83	8	8
St. Clair Roadway Co.	12	12
" " River Rdy. Co.	14	14
State Road Tel. Co.	8	8
So. Town Line Rdy. Co.	15	15
Stony Run Tel. Company	18	18
Sherman Telephone Co.	11	11
St. Clair Mut. Tel. Co.	14	..
Starville Roadway Co.	11	11
So. Groveland Rdy. Co.	12	12
Stevenson Lake Tele. Co.	11	11
Spaulding Roadway Co.	10	10
Springborn " "	14	14
Salzburg " "	8	8
Southwest Springfield Co.	12	..
Stringey Lake Rdy. Co.	8	8
Sauble Tel. Co.	6	6
Thompson Telephone Co.	9	9
Thyson Roadway Co.	8	8
Town Line Roadway Co., St Clair	15	15
" " " " Boyne City	7	7
Van Town-Mason Roadway Co.	43	..
Vantilburg Tel. Company	7	7
52*h* Vernon Roadway Company	8	8
Washburn, C. L.	16	16
West Ambler Tel. Co.	8	8
Wedel Roadway Co.	8	8
West Rose Roadway Co.	11	11
Walnut Ridge Tel. Co.	4	4
Woodville Telephone Co.	24	24
Winsor, R. J.	8	8
Willover Telephone Co.	9	9
Waloon Lake Tele. Co.	16	16
West Flushing Rdy. Co.	17	17
West Argentine Tel. Co.	27	27

Name of company.	No. tele's.	Leased from M. S. T.	
Wise Telephone Company	14	14	
West Town Line Rdy. Co.	22	22	
Wakefield Telephone Co.	11	11	
West Attica Roadway Co.	15	15	
" Avenue " "	6	6	
Wright Roadway Co.	5	5	
Wayside Telephone Co.	14	14	
Westrick Roadway Co.	16	16	
Walnut Lake Tel. Co.	11	11	
Yankee Street Ry. Co.	4	4	
Zaring Roadway Co.	21	21	
Toby Telephone Co.	5	5	
	3,034	2,502	532

Estimated value of telephones owned by Michigan State Telephone Company	$17,514
Estimated value of lines owned by Roadway Companies used in connection with the Michigan State Company's telephones	55,044
Estimated value of lines and telephones owned exclusively by Roadways	15,960
	$88,518

53 On June 30, 1909, M. S. T. had approximately 122,000 of its own telephones. I have no record of the companies of the sub-license list that are co-operative or mutual in nature. I am not sure of any except those whose plans I was advised of at the time I made the contracts. Some of them of which I have knowledge in that way are:

The Citizens Tel. Co. of Harrisville, Pinconning Mutual Tel. Co., F. H. Taylor, The Wallace Tel. Co., and Portland Tel. Co. which were organized to furnish general telephone service within a certain territory at certain rates, were organized to furnish telephones at a profit. I could not say whether the others are mutual or not.

I am not sure that those that I have named are not mutual. The United States Gypsum Company was eliminated because I did not consider it of any value in this connection, they had only two or three telephones. The Wisconsin Land & Lumber Co. operates eleven telephones; I don't know whether all the telephones are devoted to their lumber business.

I don't think I would be qualified to put a value on our individual telephones in Grand Rapids for the purpose of reaching a value for our entire system there; my work has been largely confined to rural development.

The figure for a city exchange would be nearly double $30. In getting at the $30, I had in mind no particular line, probably a hundred different cases. I would not care to give any specific line that $30 would be an average for; we have in a large number of cases sold the material to farmers who built roadway lines in connection with our exchanges.

"Q. You have taken your general knowledge of the entire situation of the rural telephones of the sub-license rural and roadway character, and have struck a general average for the property, that is, property including the telephones and everything there is, and set it at $30. * * *

A. Yes, sir."

I would take the Ashley Home Tel. Co. as coming nearest to the value of $30 per station. I didn't attempt to separate this
54 figure among the different elements entering into the construction, such as telephones or switchboard. I think I estimated about $20 a station, including switchboard.

I didn't mean I took the Ashley Home as an example for the purpose of applying $30 to these other lines. In answering your question I took that company as appearing at the head of the list. I took no particular line, but based my figures on my general knowledge of the business without attempting to sub-divide or separate specific items of any particular property that enter into it, or to apply it to any particular exchange.

I made up my mind they cost about $30. The variation in cost of construction might affect the value although hardly 50 per cent, that percentage is rather high.

"Q. The value might vary 50 per cent, up or down?

A. Well, not to exceed that."

I have in mind a company whose construction probably cost them considerably more than $30.

I would not say that I have inspected any of the exempted companies; I don't know. I would say I have inspected, going over the entire line, four or five of the roadways or rural or sub-license companies.

"Q. And you think without having gone over these lines in detail, you are competent to put a valuation on them?

A. Well, I don't know that I should try and verify my—I would say that I am as competent as anyone that I know of, yes, sir."

I have advised our company to purchase lines without more thorough inspection.

It is generally true that it costs the mutual companies less to construct than it would cost us, on account of their not taking into consideration the labor.

55 The Brooklyn Switchboard association is composed of men who own the switchboard and switch for various farmers' lines at an annual rate per station.

There are quite a number of roadway lines to make up its 600 telephones.

The Bridgman Tel. Co. was doing business June 30, 1909, but is out of business, having been absorbed by the Citizens of New Troy. I am not sure whether the Citizens of New Troy is a mutual company. I think it is a switchboard.

M. A. Bates of Grayling was under construction in 1909. He had only been going a couple of months. Our contract with him was made in March, 1909.

The Citizens Co. of Harrisville, I don't think a mutual company; if it is they are charging rates for service and operating for profit. I don't know as their rates would cover their expenses.

The East Shore Tel. Co. of Lakeside, Berrien Co., is owned by two women.

The Fulton Mutual of Pompeii, Gratiot Co., is a mutual or co-operative company.

Hill's Rural, of Au Gres, is individualy owned.

S. A. Hempstead owns certain construction in Laingsburg, and farmers' lines, owned by farmers, connect with his exchange. I don't know how much of the cost I have fixed is attributable to his construction or to the farmers' lines. The farmers' line construction might be the greater proportion.

The line operated in 1909 by R. C. Kinney, of Bancroft, is now the Shiawassee Mutual. I imagine it to be mutual.

The Lyndilla Tel. Co., of Gregory, is, in my impression, mutual.

The Meade Tel. Co. of New Haven, has quite a few farmers' lines. I don't know whether it is mutual. It is all country lines.

W. C. Mueler is now Wisconsin Land & Lumber Co. They
56 bought the Mueller plant at Blaney. All the telephones may be used in the company's lumber business.

Manitou Beach Tel. Co., Senawee Co., is a farm or resort line.

A. J. Moore of Carp Lake, owns his line individually, and I think charges a flat rate for service.

The Middleton Farmers' Co. may be a mutual company.

The Munith Tel. Co. is of the same character as Brooklyn Switchboard; individuals own the switchboard and stations in town, and various farmers' lines connect with it. The cost of $7,600 is intended to cover the entire property; I don't know how much of it is attributable to the rural lines and how much to the exchange.

"If we attempted to follow out the ownership of these lines, why, we may have to get back to the individual who might claim that he owns his instrument or part of the line on which he is located."

I am not sure that that is not frequently the case.

I don't know how much of the property of the Brooklyn Switchboard is attributable to the Switchboard association and how much to the rural lines.

The Pinconning Mutual Telephone Co.: It is my impression it is organized to give telephone service; whether they charge their subscribers a rental I am not sure; they have subscribers in Pinconning that they do charge rental to, though I don't know how extensive the rental part is. A part of their business is mutual, I think.

We would class such a company as operating for profit. I classed them all as such the other day.

W. B. Stafford has a few subscrobers in the village of Port Hope.

The Seneca exchange, I have no knowledge about.

The Samaria Farmers', Monroe, Co., I couldn't say whether it is mutual.

F. H. Taylor operates a telephone system with toll lines running down to the Snow Islands, under rental.

57 The Wallace Tel. Co. of Menominee Co. is not a mutual proposition.

The Burr Oak Mutual is just on the line, it may or may not be mutual.

The North Adams Tel. Co. is in the same class as the Brooklyn Switchboard. I don't know how much of its property belongs to the switchboard and how much to the rural lines.

The Riga Farmers' Senawee Co., may be mutual.

The Farmers' Independent, Monroe Co., I hardly think is mutual.

The Holloway Tel. Co., I couldn't tell the character.

The Cement City is of the same class as the Brooklyn Switch-Board; I don't know how much of the property is attributable to the rurals and how much to the switchboard association.

The Portland Tel. Co., outside the village of Portland, connects with our exchange; they are charging their subscribers, including stockholders, a certain rental. I think they were mutual in 1900, but have lately changed their plan.

Smith and Laird were interested in a hotel proposition at Burt Lake and had two telephones.

I am not sure that I have ever been over all the property of any of the sub-license companies. I have been over the state quite generally, and looked over quite a number of properties, but not with the idea of forming an estimate of their value. I have been over considerable of the construction of the F. H. Taylor line, East Shore, M. A. Bates, and Citizens of New Troy; from my inspection I don't know whether those not inspected are like those inspected except so far as the central office or equipment belongs to us.

In determining the value of those companies I took into consideration the fact that they could construct cheaper than our company. Our construction would amount to more than double what I have placed against those companies. My value is not altogether based on the cost of construction.

"I have tried to consider a certain depreciation without
58 determining the amount, as a great many of those companies have been organized and put in operation in the past three years, and some of the companies shown on there were hardly in operation a whole year, and it was very hard to determine the amount of depreciation and I approximated it."

I have affected the cost of production with some depreciation in my mind in fixing the figure. I am not able to tell exactly what the depreciation is because of the ages of the various plants. The figures I gave would be pretty close to the present value of the properties, meaning the cost affected by depreciation.

I don't know anything about the income of these properties and didn't take that into consideration.

Our records indicate R. L. Winslow owns the La Porte Tel. Co.; that was on the taxed lists. Our records show Winslow at La Porte; there were two properties, one at Hemlock and one at La Porte.

CHARLES E. TARTE recalled.

Direct examination by Mr. CAMPBELL:

Exhibit D, set out in full following, is a list of some of the non-taxed telephone companies we switch for. The number of telephones stated is as of June 30, 1909, where I had the information.

Exhibit D.

	No. of tel.	Value.	
Aetna Tel. Co., Morley	..	$482.00	
Amble Tel. Co., Amble	..	438.00	Ex. B.
Baltimore Centre Tel. Co., Hastings	12	360.00	30.
Big Prairie & Everett, White Cloud	..	1177.30	
Black Creek Farmers' Tel. Co., Harvard	6	180.00	30.
Centre Road Tel. Co., Hastings	..	251.12	Ex. B.
Clam Union Tel. Co., McBain	40	800.00	
Coldwater Tel. Co., Le Roy	12	240.00	
County Centre Tel. Co., Hastings	..	146.00	Ex. B.
Cyclone Tel. Co., Morley	..	135.00	Ex. B.
Deerfield Rural Tel. Co., Morley	7	140.00	
Dewing Tel. Co., Leroy	10	200.00	
East Hope & West Baltimore, Hastings	13	390.00	30.
East Irving & Hastings	10	300.00	30.
Ellsworth Tel. Co., Luther	30	600.00	
59			
Evart & Muskegon Val. Tel. Co., Evart	29	580.00	
Evart & Emarld Tel. Co., Evart	28	560.00	
Evart Centre Line Tel. Co., Evart	37	740.00	
Everett Centre, Tel. Co., Newaygo	No knowledge.		
Fall Creek Tel. Co., Hastings	8	240.00	30
Farmers Ind. Tel. Co., Trufant	11	220.00	
Farmers Union Tel. Co., Manton	..	200.00	Ex. B.
Gilbert Tel. Co., Manton	..	350.00	Ex. B.

Gleaner Tel. Co., Evart	8	160.00	
Gobleville Farmers Mutual Tel. Co., Gobleville	..	1333.75	Ex. B.
Hastings & Carlton Co-operative Tel. Co., Hastings	..	391.50	Ex. B.
High St. Tel. Co., Hastings	9	270.00	30.
Irving Tel. Co., Irving	12	360.00	30.
Lake & Osceola County Co-operative Tel. Co., Tustin	..	123.64	
Lake Ann & Oviatt, Empire	..	986.00	
Lake Region Tel. Co., Peacock	..	194.87	Ex. B.
Lake View Tel. Co., Hastings	9	270.00	30.
Leroy Tel. Co., Leroy	..	44.59	Ex. B.
Leroy Township, Leroy	..	100.00	Ex. B.
Little River Tel. Co., Morley	..	166.47	Ex. B.
Luther & Hoxeyville Tel. Co., Hoxeyville	17	340.00	
Marengo Prairie Tel. Co., Newaygo	26	520.00	
North Hersey Tel. Co., Hersey	..	258.78	Ex. B.
North Osceola Tel. Co., Evart	9	180.00	
N. W. Rutland Tel. Co., Irving	..	494.26	Ex. B.
North Winfield Tel. Co., Morley	23	460.00	
Pogy & West Tel. Co., Evart	..	728.00	
Randolph Tel. Co., Leroy	..	120.86	Ex. B.
Richland Tel. Co., McBain	53	1060.00	
Rose Lake Tel. Co., Leroy	..	448.40	
Rural Co-operative Tel. Co., Quimby	..	643.23	Ex. B.
Sawyerville Tel. Co., Leroy	..	247.00	Ex. B.
South Rutland Tel. Co., Hastings	..	232.92	Ex. B.
Star Mutual Tel. Co., Luther	..	155.70	Ex. B.
Star Tel. Co., Hastings	..	118.37	Ex. B.
Town Corner Tel. Co., Tustin	..	21.90	

	No. of tel.	Value.	
Village Hall Tel. Co., Fremont	8	160.00	
West Rutland Tel. Co., Hastings	14	420.00	30.
White River Tel. Co., White Cloud	..	22.80	
White River Valley, White Cloud	..	365.23	Ex. B.
Wilcox Tel. Co., White Cloud	..	306.75	
Leighton Tel. Co	50	1500.00	
		21836.44	

60 "I have prepared estimates for our company, bought material, gone over a good many lines that were constructed, O. K.'d pay-rolls, and have a reasonably accurate knowledge of what it costs to build lines of that kind."

I feel competent to give a reasonable estimate of the value of these telephone lines and have estimated the value of the various lines by placing an average cost per unit.

"One average cost, where the telephones are owned by the companies, and one average cost, where the telephones are not owned by the companies. The average cost where the telephones are owned by the companies, $30 a unit, and where they are not owned by the companies, $20 a unit."

Mr. WYKES: I object to the witness answering because the testimony is not based upon a proper qualification; the witness has shown no familiarity with or knowledge of the specific property which he seeks to value; and also include in the objection the specific objections that I made to the testimony of Mr. Berry along the same line.

Where I had information with regard to the actual conditions I used figures based upon the units previously given; where I had no definite information I used the figures on Exhibit B. The column headed "value," contains my estimate made in one of these ways.

I marked $30 opposite those on which I used that unit, and Exhibit B opposite figures taken from it. I have not been over the lines of these companies to any large extent. I have seen parts of some of them, but have never been over all of the lines. My estimate is based in particular, upon information from our managers and agents.

I have informed myself, as far as possible, of the conditions of the different lines operated in connection with ours. I have quite definite information from our managers and agents with regard to the character of the lines and classes of construction—in many cases definite information. The figures of $20 and $30 are averages, according to experience and definite information in regard to some of the lines.

(Exhibit D offered in evidence.)

Cross-examination by Mr. WYKES:

Where in Exhibit D the figures $30 or the words Exhibit B are not opposite the value fixed, I used $20 per telephone.

I have seen some of the property of the East Irving & Hastings Co. This memorandum was prepared by me to help in getting average values on this kind of lines. What I have read represents the entire equipment of that company.

61 I made no inspection of the property itself; I was over some of it, possibly a couple of miles, a year and a half ago. I placed the value of each item by taking the costs. I divided the gross property by the number of telephones. In that company

I found it about $34 a 'phone. I don't know what the property of this specific company cost.

I know nothing about the company's earnings or income, or about the income of any of the companies I valued, or what it costs them to operate or whether they operate at a profit or loss. This line would be worth more than $30 to us to own and operate in connection with ours. If we owned them, they would produce more than enough to fix a value of $30 a 'phone.

That is, if we charged them a $12 or $15 rate instead of assessing each person so much per year. I didn't go out and count the items of property on the system myself, I got it from a manager who reported it for purposes of my valuation.

I was also over several miles of the Hastings & Carleton, a co-operative company, about a year and a half ago. I found the construction on the lines out of Hastings to be first-class rural line construction.

I took the figures obtained from the companies around Hastings, and my knowledge of the cost of construction of rural lines and placed a cost of $30 where the farmers owned their own telephones, and $20 where we own them. I believe, in every case, it would cost more than $30 or $20 to build this kind of line. I figured this amount would take care of depreciation, and didn't figure it at any specific ratio. Practically all these lines were less than five years old.

62 I have been over a good many other telephone lines, but cannot name any of them. Conditions on other lines as found by myself, didn't enter into my figures, except as they bore on my general knowledge. I know the character of construction being pretty close to the operation of our companies, and knowing when a line was built, and what the farmers are using in it.

There might be a variation of 50 per cent in the construction, though practically, I don't believe there is, because we furnish them the technical information about how to do it right. The percentage of variation between the lines out of Hastings and the poorer grade of construction of cheap farm lines, might be from 10 to 50 per cent.

With the exception of the Gobleville Farmers, Leighton and Amble Tel. Cos. the list includes only companies we switch for in our own exchanges. I believe the Hartwick and Osceola Rural are the same. The latter is on the assessed list.

(Exhibit D is set forth on pages 58 and 59 of the Record. The aggregate value fixed, for companies connecting with the Citizens, is $21,836.44.)

My information as to the character of construction of farm lines came to me in the regular course of business.

Mr. WYKES: I want to make this objection, referring to the offer in evidence of all the reports of both classes of companies made by Mr. Campbell on page 4 of the transcript, I wish to object to those which are reports of or refer to companies not taxed and not com-

plainants, because no discrimination on behalf of those companies against the companies exempted is claimed, and whether discrimination against those companies exist or not, it is not discrimination against the companies complainant, and those reports are immaterial and incompetent. I do not intend by this to vary the stipulation that we first made today.

W. J. MELCHERS recalled.

Direct examination by Mr. CAMPBELL:

On Exhibit E is a list of non-taxed companies operating in connection with the Union Tel. Co. On it appears the number of telephones, the cost of property and the valuation I placed on the property.

My knowledge of the cost of construction of rural lines was obtained in building lines for the Union. I have charge of that
63 part of the work, and am familiar with the construction of rural lines. In a number of places I have seen the lines by driving through the country and observing their character of construction. We recommend the manner of construction; in cases, furnish a lineman to assist in construction. In most cases they followed our instructions. The valuations in the last column of Exhibit E are my judgment of the cost, allowing for average depreciation. In arriving at the valuations, my basis was the cost of material and construction; the computations are at $30 per 'phone for lines owning, and $20 for lines not owning, their own telephones, with certain exceptions. I would say that the values fixed are reasonable.

SPOTS ON PAGES

EXHIBIT E.

	Cost of property.	No. of tel.	Valuation.
Ashley Rural Tel. Co., Ashley, 4 miles poles, 8 miles wire (Bell Co.)	.....	9	$270.00
Bannister Mutual Tel. Co., Bannister	$129.43	17	510.00
Barryton Rural Tel. Co., Barryton	226.00	24	720.00
Bluff Creek Tel. Co., Coleman	251.25	7	210.00
Cedar Valley Tel. Co., Winn	97.00	6	150.00
Chippewa Rural Tel. Co., Barryton, 5½ miles line	.....	11	330.00
Clifford Lake Indp. Co., Stanton, 6 miles line, 6 miles wire	.....	17 Rent	340.00
Coldwater Rural Tel. Co., Barryton, 8 miles lines, 8 miles wire (8)	.....	10	300.00
Crystal Tel. Co., Crystal	200.00	83	3000.00
Curtisville Tel. Co., Barryton	226.00	12	360.
East Bethany Tel. Co., Breckenridge, 1 mile line, 2 miles wire	.....	7	140.
East Ferris Union Tel. Co. (Rimdale), Vestaburg	840.00	20	600.
Enterprise Tel. Co., Coleman	160.00	14	420.
Farmers Mutual Tel. Co., Chapin	56 asst. 1800.00.	Taxed	37.21
Gillmore Rural Tel. Co., Farwell	400.00	34 (Rented)	690.
Gladwin Road Tel. Co., Coleman	56.00	8	240.
64			
Greenwood Mutual Co., Harrison	360.00	27	810.
Hinton Mutual Tel. Co., Lakeview	619.00	40	1200.
Hope Improvement Co., Hope	200.75	45	1350.
Ingersoll Rural Tel. Co., Midland (Posyville), 34 miles line, 39 miles wire (68)	.....	65	1300.
Jasper Tel. Co., St. Louis, 18¼ miles line, 68½ miles wire	966.00	44 (Rent)	966.
Larkin Rural Tel. Co., Midland	250.00 (18)	18	540.

SPOTS ON PAGES

Lumen & Curtis Tel. Co., Coleman, 10½ miles line	.....	13	390.
Maple Valley Tel. Co., Vestaburg	83.67 (Rent)	12	180.
Mecosta Mutual Tel. Co., Mecosta	249.52	9	250.
Newark, Fulton Indp. Co., Ithaca (Perrinton)	250.00	23	690.
North Perrinton Mut. Tel. Co., Perrinton	145.30	23	330.
North Shade Tel. Co., Middleton	.....	40	1200.
Salt River Tel. Co., Rosebush	256.75	23	690.
Sanford Mutual Tel. Co., Sanford (Barryton)	850.00	30	900.
Sherman City Tel. Co. (Sherman City)	634.45	32	960.
Sidney Tel. Co., Sidney, 10 mile line	350.00	35	1050.
South Fulton Rural Tel. Perrinton	244.14	18	540.
South Hinton Tel. Co., Lake View	345.00	13	390.
Sumner Rural Tel. Co. (Joseph Kleis), Carson City	410.03	17	510.
Town Line Tel. Co., Ashley	100.00	7	210.
Townsend, G. S., Six Lakes	576.30	26	780.
Washington Center Mut. Tel. Co., Pompeii, 60 miles line, 80 miles wire	.....	150	4500.
West Burns Tel. Co., Bancroft	200.00	8	240.
		976	$28246.

Houghton Lake Tel. Co. Rep. as 713.43. 10 phones.
Leota Telep. Co. Rep. as 224.00. 3 phones.

14—284

THIS PAGE IS BOUND VERTICAL IN BOOK

65 Cross-examination by Mr. WYKES:

In instances I took a unit value of $15 or $25, based upon local conditions.

I have seen parts of the property of a number of these companies. There are some on the list, I won't say how many, where I have never been on the line or any part of it. I don't remember whether I have ever been over the entire property of any of them.

I fixed the unit costs applied with reference to my best knowledge, information and belief. In a few cases I knew how much they put in per phone, e. g. the South Hinton put in $33.50 in cash; labor and poles additional. The North Shade, $31; labor additional. The Ingersoll, which I estimated at $15, put in $20 in cash; poles and labor additional. These lines were all constructed since 1899.

G. S. Townsend is in telephone business as a money making proposition. The income on these lines didn't enter into the fixing of the $30. I consider they are all operating at a profit indirectly, because getting cheap telephone service.

The $30 fixed is the cost of construction allowing reasonable depreciation. I fixed no figure for depreciation, but just averaged it. I fixed a figure low enough to cover depreciation.

Mr. WYKES: I want to here move to strike out the testimony of this witness as to the value and base the motion and objection of the same character as that I made to the testimony of Mr. Tarte and Mr. Berry as to their qualifications for valuation of these properties that they had not seen; and also the objection with regard to the valuation here being for purposes of taxation which involves the income or sale value and not the cost of construction; and I also wish to make an objection to the testimony of the three witnesses given today on the ground that it is an attempt to impeach on the part of the complainants the testimony which they have previously offered and which is contained in these reports, and in the tabulations that they have offered.

65*a* (Reports of complainants for year ending June 30, 1909, marked Exhibits F, G, H and I.)

CRESCENT A. PARKER recalled.

Direct examination by Mr. WYKES:

The average rate for 1909 was $20.67 per thousand.

I have in charge reports of telephone companies under Act 49 of 1909 for 1909 and 1910, and am familiar with them. The time for filing 1910 reports expired yesterday. A comparison of the reports show there will be a variation in the lists of companies taxed and exempted last year and this year. Some will be taxed this year that were exempted last, and some exempted this year that were taxed last.

The Quincy Tel. Co. was sold to the Southern Michigan, as is indicated by the records of my department.

W. J. BERRY recalled.

Cross-examination by Mr. WYKES:

Defendants' Exhibit 1 is the precedent for our rural contracts. Defendants' Exhibit 2 is the form of our roadway contracts.

I recognize that pamphlet as a publication of our com-
66 pany. It was put out to show how the farmers could obtain service under plans different from those of our regular exchange plans. Pages 1, 2, 5, 6, and 7 of Exhibit 3, are as follows:

"Page 1. The purpose of this pamphlet is to present a plan to the rural residents of Michigan, whereby they may secure at a moderate cost, telephone service.

The plans herein proposed contemplates the ownership of the poles, wires, etc., together with their care or maintenance by neighborhood groups, such wires to be connected with switchboards of nearby exchanges or the establishing of switching stations at a point convenient to present toll lines.

Examination of this arrangement shows it to be simple and entirely practicable, bringing within the means of the average country dweller, the privilege of telephone communication with other parts of Michigan."

"Page 2. Six or more individuals in a neighborhood not less than one or more than ten miles from the offices of the Michigan State Telephone Company, may have communication with all of the subscribers connected with that exchange for a moderate rental, which will include complete sets of telephones of improved form for farm line purposes, including the protector. Subscribers are required to build and keep in repair their own lines, but if preferred, the company will do the construction work at actual cost.

The subscribers will have the privilege of using the poles of the company where available at a reasonable annual charge per mile."

"Page 5. If the telephone sets and supplies on rural lines be selected with care as regards their adaptability to the purpose intended and as regards quality, they will, with proper installation, require but little attention.

Good equipment means low maintenance cost and reliable service. Protector fuses are sometimes "blown" during a thunder storm, putting the telephone out of commission for the time being. When the storm has passed, however, it is the work of but a moment to put in new fuses, and any one can easily do it.

67 The care of a pole line in a rural district under this plan is inexpensive, on account of the subscriber living along the line in which he is interested. Insulators and brackets are sometimes broken. The replacement of these is a simple matter and not expensive. The necessity for trimming trees and removing broken limbs is apparent, the remedy being largely in the hands of the subscriber."

"Page 6. It is not altogether necessary to form an organization to obtain service under this company's plans. An agreement between the individuals along a certain line under which they will recognize certain individuals as representing them in the signing of a con-

tract, will be sufficient and satisfactory. Circumstances however, may render a copartnership desirable. Experience has proven, that the most satisfactory service is given in cases where the rural subscriber is receiving service over a line in which he is financially interested."

"Page 7. Our plans for furnishing service are flexible and apply to those living in the neighborhood of existing toll stations. In any well-settled territory there should be prospects for fifty subscribers under this plan at the outset, with good prospects of at least one hundred subscribers within two years after the opening of the exchange.

The instruments furnished under this plan allows each subscriber on a line to call the central office without disturbing other subscribers on the same line, and also allows the subscriber to ring all of the subscribers on his line without calling the central office.

One of the strong features of this plan is the absolute independence of the subscribers, each group owning their own line, which limits the responsibility of the subscriber to the line which he maintains jointly with the others of the same circuit."

(Forms of contract for telephones in exchanges outside Detroit and for Detroit exchange, produced, marked defendants' Exhibits 4 and 5, respectively.)

Subscribers on a roadway or rural are shown in our directory with nothing to indicate that they are different from our other subscribers, and the directory is furnished to each subscriber on the roadway and rural lines. They call any part of our line within their district, the same way as any other subscriber does.

68 In the list the 600 phones of the Brooklyn Switchboard was intended to include all the lines running into the switchboard. The same is true of the Munith, Cement City and North Adams. We have no knowledge of the ownership of the lines that connect in there; we do not inquire into the identity of the different entities coming into those switchboards, and have no contractual relations with the different lines.

The names given for the list of "rurals" are the names of the managers of the different exchanges. The telephones on the rurals are generally owned by the Michigan State Telephone Co. The percentage of our ownership is about the same as on the roadways.

In the construction of roadways the farmers themselves do such work as they are able to do. In a long line with a large amount of construction, the unit price would vary somewhat with the number of phones in a given stretch of wire, but, as the average roadway line covers from fifteen down to six miles, it would hardly offer sufficient field to vary the expense. The average telephone to the mile in Michigan is about two, there would be a slight variation in the cost per telephone based on the number of telephones to the mile. The line and poles cost about two-thirds of the entire property.

The labor for installing a line I would figure at $30, would be $15 to $18 a mile. New telephones for farmers' lines are approximately $10 a set, to which should be added $1 to $3 each for in-

stallation. The best grade of telephone costs a little over $11, and they run down to between $7 and $8.

The price I have figured would be a low cost to our company to go into a farming community and put up the line; it would
69 not, of necessity, cost the farmer that much if he didn't consider his time worth anything.

(Defendants' Exhibit 6, the form of contract with hotel exchanges, introduced in evidence.)

Redirect examination by Mr. CAMPBELL:

The individuals named in my rural list are the names of the individuals with whom we have contracts; the various companies are owned by associations as I have previously testified. Our company operates telephone lines similar in character and location to the roadways. We term this our farm line service. It is quite general throughout the state; we are serving approximately 20,000 farmers with our own lines.

So far as the operating is concerning, the service is not different from that rendered to the roadway companies. The 20,000 is our own subscribers on our own lines in rural districts; the rural roadway subscribers are served by us in the same way that they are, so far as operation is concerned. We have one rural line connecting with us 15 miles long. The longest roadway line I have knowledge of in Michigan, is 21 miles; the average would be 7 or 8 miles; a length of 15 miles would be extreme.

C. E. TARTE recalled.

Cross-examination by Mr. WYKES:

On the list of lines connected with the Citizens Co., which are roadways, our company owns and operates the switchboard the same as the M. S. T.

By Mr. CAMPBELL:

In addition our company owns and operates rural and farmers' lines. Those lines are practically the same thing, as far as the service is concerned, as the line of the roadway companies.
70 They give the same kind of service and operate through the same kind of country, practically the same thing, so far as service is concerned. The Citizens owns and operates rurally about 6,000 telephones.

By Mr. WYKES:

Practically the only difference is that on the roadway they own their own lines instead of our owning them, and get the same kind of service cheaper. The roadway members get their service over our line in the same way the subscriber on the rural we own does; the situation is exactly the same, except the line ownership.

Theoretically, the secretary of each company is expected to collect the bills and pay them to us in a lump sum, but to save the secretary work, our representative takes the money from individual sub-

scribers and gives credit on our books. Our account books show the name of the company at the top with a list of the subscribers down the page, and whenever a subscriber pays us, he is credited with the amount. Sometime during the quarter, we notify their secretary that there is a certain number who have not paid and he collects. We receive payment from the individual subscriber in almost every instance, and some of the subscribers always pay us.

From what I know of these roadways they run in length from 7 to 10 miles. While I know nothing about it except by hearsay, I am under the impression that many of the lines in the southern and southeastern part of the state are not very good. The lines out of Hastings I consider very well constructed, though they have not a great amount of cedar poles.

They are, as far as the setting of the poles, etc., are concerned, fairly good lines.

In the Hastings territory all the subscribers on the roadways own their telephones individually. In the balance of our
71 system, we own practically all the telephones and rent them to the farmers. This would take from the valuation I fixed the other day, $13 for each telephone owned by us, and its installation.

The method of the farmer in building the line is that it is done in different ways—by getting together or by hiring some man to take charge and picking up help where they can to build the line. For maintenance they always find a farmer's boy or two and pay so much an hour. In some cases a farmer makes repairs himself, but not generally. The maintenance is not taken care of as well as on our lines.

I believe on the farmers' lines the troubles are cleared up quicker than on ours.

"Here is the idea: They are driving over the highway, some of them, every day, and they are interested in those lines and notice them, where otherwise they don't pay any attention to them. If they notice anything wrong, if it is something they can't fix themselves, they see that the proper man is placed in touch with it and fixed, where otherwise they would wait until the telephone was out of service before they got us after it."

That different names appear on your lists and ours does not necessarily indicate two companies. These companies contract with us on their organization and give a name they propose to do business under, and may adopt another at subsequent meetings. Though they change their name later, we keep the original record. Our collections from the individual subscriber is merely a convenience for the association.

W. J. MELCHERS recalled.

Cross-examination by Mr. WYKES:

The greater percentage of lines I have listed, the exchange is operated by the Union Telephone Co., the same as described by Mr. Berry for the M. S. T., the exceptions are, that for N. H. Blake, the Cedar Valley, Edenville, Ingersoll Rural, Sanford Mutual and Hope

Improvement Tel. Companies, we don't operate the switchboards. In our telephone directory we have the subscriber on the roadways in our alphabetical list of subscribers in that district.

Those people are given the same service that one of our own rural subscribers in the same district gets, they call our office in the same way and get the other subscriber in the same way.

In our territory the average length of roadway line is a little longer on account of being very scattered; there are some that would probably run eight or nine miles, some of them are very long, twelve or fifteen miles; fifteen miles is the very longest.

72 The construction up in my country is fairly good, for that class of companies. I have been advised that there are more of that character of companies in Lenawee, Jackson and Monroe counties than up in my district. Our collections are usually through the association, not from the individuals.

We used to list each subscriber on our account books, but a year or so ago began to change them over.

By Mr. CAMPBELL: Our company operates a rural service. This is of the same character as that given these roadway companies. On July 1, 1909, we had 3,200 to 3,400 telephones on roadway lines owned by us.

(Certified list of corporations appearing in Exhibit A, produced, marked defendants' Exhibit 7, and introduced in evidence.)

CRESCENT A. PARKER recalled.

Direct examination by Mr. WYKES:

(Figures given from the reports, hereinafter mentioned, will be found in Exhibit B, and are omitted here.)

The Ashley Home Tel. Co. reported for 1909 and 1910.

The 1909 report shows it had just installed its plant on June 30th, 1909, and had no receipts earned or paid in, and did no business for which customers were charged. The company will be taxed for 1910.

I have reports for the Brooklyn Switchboard association for 1909 and 1910. The report shows connections with the M. S. T. and several farmers' private or individual lines, some incorporated and some not. The entire property is stated to be one switchboard, valued at $250; it is stated the association has no lines of any kind. The 1910 sworn report says, "this company does not operate for profit. Connects different farmers' lines to each other and to the Bell line."

The Bridgman Tel. Co. reported for 1909. It states, "Our com-

73 pany is a local concern; we rent our instruments and equipment from the Michigan State Tel. Co. The only investment we have is in our line and poles." Miles of wire is given as ten. I have a letter from the postmaster at Bridgman, stating, "This company was sold to the Citizens of New Troy."

Citizens Tel. Co. of Berrien (New Troy), the same company, re-

ported for 1909 and 1910. Organized October 13, 1907; mutual corporation, no dividends; each member owns one share. We receive $7 per year from each subscriber and one rents his phone at $15 per year. The labor up to 1909 was nearly all donated.

The report for 1910 contains an item of $300 for purchase of Bridgman line. This company has earnings sufficient to be taxed for 1910.

M. A. Bates of Grayling reported for 1909 and 1910. The first report states that he started operation March 1, 1909, four months before June 30th; receipts for that period, $328; will be taxed for 1910.

Citizens Tel. Co. of Alcona reported for 1909 and 1910. The first report shows they organized March, 1909, and started work twenty-six days before June 30, 1909. The earnings are sufficient to make it taxable for 1910.

I have two letters from the Cement City; one, dated November 9, 1909, says, "M. S. T. of Jackson owns and controls this small exchange, and I suppose they have reported it * * * there is some farmers' lines ring in here and they connect to Bell exchange." The letter on July 22, 1910, states, "There is a few cheap farm lines run in here. No company, not organized * * * they just do the switching in my post office."

The East Shore Tel. Co. made reports for 1909 and 1910.

Fulton Mutual Tel. Co. of Pompeii reported for 1909 and 1910, The 1910 reports state "About four miles of telephone line * * * each of the stockholders pay every ninety days $1.08, for each telephone they have in their residence or place of business.

We are making nothing on this telephone. Merely con-
74 venience for the few stockholders owning and operating it.

S. A. Hempstead reported for 1909 and 1910. Reports 10 phones in 1910.

R. C. Kinney; we have no report but correspondence. He is not operating this year. This is gossip, but I believe it is so.

Lyndilla Tel. Co. reported for 1909 and 1910. From supplemental report it appears that he did not report his entire income for 1909 or 1910; had he done so the amount would have exceeded $500 each year.

Meade Tel. Co.: I have a letter for 1909, and report for 1910. The letter shows the company to be a mutual roadway, constructed by farmers who own their own telephones; it does not pay dividends. The 1910 report shows they have no exchange.

Wm. Mueller Tel. Co. sent a letter in 1909, and a sworn letter in 1910. The letter in 1909 states, "The only telephones we have are local phones for own private use, and not for outside business." The letter for 1910, shows this company was succeeded by Wisconsin Land & Lumber Co., and states: "Our telephones are for our own private use only."

For Maniton Beach Tel. Co. I have a letter, signed by district manager of M. S. T. which states: "About all there is to this company is the name. It consists of a line connecting ten parties during the summer months. The only expense is for rental of instru-

ments and the receipts are just sufficient to meet this." Subsequent correspondence shows the line to be owned by 5 cottagers, being connected to trees, with no poles.

A. J. Moore of Carp Lake reported for 1909 and 1910. For 1910 reports subscribers and renters, 7; members, 7; miles of wire, 18; pole line, none.

Middleton Farmers' Tel. Co. reported for 1909. Reports 65 phones, 12 of which are rented at $6 per year.

Pinconning Mutual Tel. Co. Organized March 7, 1908,
74a stated to be a mutual with revenue from assessments.

W. R. Stafford of Port Hope, reported for 1909 and 1910; commenced operation October 1, 1908, states:

"This exchange was started with the intention of extending the telephone to cover the surrounding territory, but owing to unforseen changes, this has not been done, and have surrendered contract back to the Michigan State Telephone Company, although am continuing same until the business here is turned over to some other party."

"This small exchange run in connection with my store and operation is not paid for specially, but done with the usual work."

Seneca exchange reported as Clayton, Sand Creek and Bimo. For 1909, states: "No dividends, no poles or wire; receipts $15, expenses $3." Cost of telephonic apparatus, $40. No subscribers.

Charles T. Allen, reports for this company for 1909; expenses, $3; receipts, $10; number of members receiving service, thirty.

Samaria Farmers' reported for 1909 and 1910. From 1909 report: "Organized November 28, 1908; the company is an association and the shares are assessed for running expenses. No dividends." From 1910 report: "This company is not a money making concern, it was organized for cheap service. * * * The stockholders are assessed for running expenses." The earnings for 1910 exceeded $500.

F. H. Taylor reported for 1909 and 1910, stated that figures reported for 1909 are estimates, "I have kept no records;" will be taxed for 1910.

Wisconsin Land & Lumber Company reported for 1909, that:

We have no telephone plant or line. We are subscribers to the Michigan Tel. Co., and have for our own convenience, telephones in our mills and store. Have no income. It is all out.

Wallace Tel. Co. reported for 1909 and 1910. In 1909, 8 telephones, one-half mile line, 5 miles wire.

The Board of Assessors recently required an additional sworn report from the non-taxed companies, on blanks sent to all named on
75 our list, or whose names we could procure; the purpose was to send it to every institution and person who owned any telephones.

We made diligent investigation to discover all telephones operated in Michigan.

A. Yes, sir, we applied to the several operating companies, what I mean by that the companies such as the Michigan State Telephone Company, the Citizens, Union, Southern Michigan, and Valley

Home; we went to the secretary of State's office, and all the companies that had filed articles; we procured from these various companies that I spoke of a moment ago, the number of telephone companies that were connecting with them either directly or otherwise; we took the Auditor General's list of companies that had been taxed for a number of years, took all the companies we could find in that list, we received some through our field men hearing of a telephone company. These altogether made up our list of companies last year, the most complete that was ever had in the State.

Q. And regardless of the size of the combination of telephones you have listed the institution or person or corporation or association or partnership as it might be, in one of these two lists that are in these exhibits A and B have you?

A. Yes, sir.

All that we could discover were listed in Exhibits A and B. We sent this form for supplemental report to all the owners of lines that appeared to be exempt, 435 in number.

We have received replies from all but forty-five or forty-seven. (Ten or twelve of these have since reported as being not organized for profit.) I have tabulated the answers in those reports, the tabulation shows the name of the company and their answers to the question whether organized for profit. To the best of my knowledge, it is correct; it has been compared.

75*b* Tabulation marked Defendant's Exhibit 8, is as follows:

Compilation of Special Reports Received in 1910.

Name of Company.	Organized for Profit.
Adair Roadway Company.	No.
Aetna Telephone Co.	No.
Algansee Central Tel. Co., L'td.	
Amble Telephone Co.	Yes.
Angerer, Chas.	
Arcada Farmers Mutual.	No.
Arcadia Telephone Co.	No.
Arenac, Ogemaw & Ilosco Tel. Co.	No.
Ashley Home Telephone Co.	
Ashley Rural Telephone Co.	No.
Alaeidon & Mason Tel. Co.	No.
Baldwin, M. D.	No.
Baltimore Centre Tel.	No.
Bammell Roadway Co.	No.
Bannister Mutual Tel. Co.	No.
Bar Lake Roadway Tel. Co.	No.
Barryton Rural Tel. Co.	No.
Bassette Roadway Co.	No.
Belle River Mills Tel. Co.	No.
Belle River Roadway Co.	No.
Bendon Rural.	No.
Berrien County Home Tel. Co.	Yes.

Name of Company.	Organized for Profit.
Bethany Tel. Co.	No.
Big Four Tel. Co.	For cheap rent and maintenance.
Big Hand Road Telephone Co.	No.
Big Prairie & Everett.	No.
Big Rapids & Grant.	No.
Big Rapids, Lilley & Bitely Tel. Co.	No.
Black Creek Farmers Tel. Co.	No.
Bluff Creek Telephone Co.	No.
Blackmore & Sammons.	No.
Bowman Roadway Co.	No.
Boyce, A. A.	No. Owned by four farmers, not organized, no name.
Bradford Roadway Co.	No.
Bridgeman Telephone Co.	
Bridgewater Centre Tel. Co.	No.
Brooklyn & Clark Lake Tel. Co.	No.
Brooklyn & South Norvell Tel. Co.	No.
Brooklyn Switchboard Association.	No.
Broomfield Telephone Co.	
Bryan Telephone Co.	Ohio corporation. Yes.
Buckeye Telephone Co.	No.
Budge, W. M.	No. Private individual.
Bunker Hill Telephone Exchange.	No.
Burnett, S. S.	No.
Burr Oak Mutual Telephone Co.	No.
Busy Bee Telephone Co.	No.
75c Cambridge & Woodstock Telephone Co.	No.
Cambridge Junction Telephone Co.	No.
Campbell Bros.	No.
Carr Telephone Co.	Yes. The benefit of cheaper rental for telephones.
Cavanaugh Lake Rural Tel. Co.	No.
Cedar Valley Telephone Co.	No.
Center Road Telephone Co.	No.
Ceresco Telephone Co.	No.
Chelsea & Francisco Tele. Co.	No.
Cheney Roadway Co.	No.
China Roadway Co.	No.
China-St. Clair Telephone Co.	No.
Chippewa Lake Telephone Co.	No.
Chippewa Rural Telephone Co.	No.
Citizens Mutual Telephone Co. of Vantown.	No.
Citizens Telephone Company of Alcona.	Yes. Co-Op.
Citizens Tel. Co. of Berrien.	No.
Clam Union Tel. Co.	No.

Name of Company.	Organized for Profit.
Clark, Jas. H.	No. 9 telephones, M. S. T.
Clam Lake Rural Tel. Co.	No.
Clark Roadway Co.	No.
Clayton, Sand Creek Bimo Co.	No.
Cleveland Valley Tel. Co.	No.
Clifford Lake Independent Tel. Co.	No.
Clinton & Shiawassee Rural.	No. A company for their own use.
Clinton Independent Tele. Co.	
Coe, S. D.	No.
Coldwater Roadway Tel. Co.	No.
Coldwater Rural #1 Telephone.	No.
Coldwater Telephone Co.	No.
Colfax Telephone Co. #1.	No.
Colfax Telephone Co. #2.	No.
Colonville Roadway Co.	No.
Conklin, F. J.	
Conway Antrim Telephone Co.	No.
Cork, W. H.	No. Farmers Tel. Co. for own use.
County Center Telephone Co.	No.
Cowing Line.	No.
Crawford County Farmers Tel. Co.	Yes. Co-operative for profit through cheaper rental of phones and money profit.
Crosby Telephone Co.	No.
Crystal Lake Farmers Mut. Tel. Co.	No.
Crystal Telephone Co.	No.
Curtisville Tele. Co., Lapeer.	No.
Curtisville Telephone Co., Barryton.	No.
Custer Peach Belt Tel. Co.	No.
Custer Telephone Co.	No.
Cyclone Telephone Co.	No.
Daggett, Nathan Faithorn Tel. Co.	
Deerfield Rural Telephone Co.	No.
Densmore, E. F.	
Dewing Telephone Co.	No.
Diamond Lake Telephone Co.	No.
Drenthe Independent Tel. Co.	No.
75*d* East Alaiedon Telephone Co.	No.
East Bethany Telephone Co.	
East Elmira Telephone Co.	No.
East Ferris Union Telephone Co.	No.
East Freesoil Telephone Co.	No.
East Gilmore Roadway Co.	No.

Name of Company.	Organized for Profit.
East Hope & West Baltimore.	No.
East Irving & Hastings.	No.
East Paradise Telephone Association.	No.
East Saugatuck Telephone Co.	Yes. Derived from the cheaper rental of telephones.
East Shore Telephone Co.	Yes.
East Town Line.	No.
Eastwood Roadway Co.	No.
Eaton Rapids & West Aurelius Tel. Co.	No.
Eby, Christian.	No.
Eddy, Ed. Clinton Rural #3.	No.
Eden Telephone Co.	No.
Edenville Telephone Co.	
Edwards, John T.	No.
Elba Center Telephone Co.	No.
Elba Telephone Co.	No.
Ellsworth Telephone.	No.
Elm Grove Telephone Co.	No.
Empire Rural Telephone Co.	No.
Enterprise Telephone Co.	No.
Etchell & Mason Telephone Co. #2.	
Etchell & Mason Telephone Co. #1.	No
Eureka Telephone Co.	No
Evart & Emerald Telephone Co.	No.
Evart & Emerald Telephone Line.	
Evart & Muskegon Valley Tel. Co.	No.
Evart & Center Line Telephone Co.	No.
Everette Centre Telephone Co.	No.
Fairview Roadway.	No.
Fall Creek Telephone Co.	No.
Farmers Independent Telephone Co.	No.
Farmers Independent Tel. Co. of Deckerville.	No.
Farmers Mut. Tel. Co. of Bannister.	No.
" " " " " Chapin.	No.
" " " " " Grand Traverse County.	No.
Farmers Mut. Tel. Co. of Robinson.	No.
" " " " " Sandstone.	No.
Farmers Telephone Co., Big Rapids.	No.
Farmers Union Mutual Company of Township of Baltimore.	No.

Name of Company.		Organized for Profit.
Farmers Union Tel.Co. of Manton.	No.	
" " " " " Morrice.	No.	
Fitchburg Telephone Co.	No.	
Five Points Telephone Co.	No.	
Flint River Telephone Co.	No.	
Forest Home Telephone Co.	No.	
Fremont Northwestern Tel. Co.	No.	
Frontier Rural Exchange.	No.	
Fulton Mutual.	No.	
75e Gaswell Roadway Telephone.	No.	
Genesee Roadway Co.	No.	
Gilbert Telephone Co.		
Gilhouse & Zorn.	No.	
Gilmore Rural Telephone Co.	No.	
Gladwin & Nolan Telephone Co.		
Gladwin County Telephone Co.	No.	
Gladwin Road Telephone Co.	No.	
Gleaner Telephone Line.	No.	
Gobleville Farmers Mutual Tel. Co.	No.	
Goodwell Telephone Co.	No.	
Grand River Valley.	No.	
Grass Lake & North Sharon.	No.	
Gratiot Roadway.	No.	
Green Oak Telephone Co.	No.	
Greenwood Mutual Telephone Co.	No.	
Groveland Grange Telephone Co.	No.	
Gun Plains Roadway Co.	No.	
Guetler Roadway Co.	No.	
Grayling City Tel. Co. (M. A. Bates.)		
Hastings & Carlton Co-operative Co.	No.	
Hayes & Elmira Telephone Co.	No.	
Hempstead, S. A.		
Henrietta Central.	No.	
Henrietta Farmers Telephone Co.	No.	
Herrick Roadway.	No.	
Herring Lake Telephone Co.	No.	Have two renters.
High Street Telephone Co.	No.	
Hills Rural Telephone Co.	Yes.	
Hinton Mutual Telephone Co.	No.	
Hitchcock Roadway Telephone Co.	No.	
Hoadley, R. P.	No.	
Holloway Telephone Co.	No.	
Holly Centre Telephone Co.	No.	
Hope Improvement Telephone Co.	No.	
Horton Bay Roadway.	No.	
Horton Mutual Telephone Co.	No.	

Name of Company.	Organized for Profit.
Houghton Lake Telephone Co.	Co-operative, more for convenience than profit.
Hunters Creek Telephone Co.	No.
Husel, Chas. Z.	No.
Ingersoll Rural Telephone Co.	No.
Ironwood Rural Telephone Co.	No.
Irving Telephone Co.	No.
James, Henry F.	
Jasper Telephone Co.	No.
Junior Telephone Co.	No.
Kalamazoo Home Telephone Co.	Yes. This company in hands of Construction company.
Kalkaska County Telephone Co.	No.
King Roadway Telephone.	No.
Kinney, W. L. (Winterfield Rural Tel. Co.).	No.
75*f* Laberteaux Telephone Line.	No.
Lake & Osceola County Co-Operative Tel. Co.	No.
Lake Ann & Oviatt Tel. Co.	No.
Lake Region Tel. Co.	No.
Lake View Telephone Co.	No.
Lapeer View Telephone Co.	No.
Lapeer Township Central.	No.
Larkin Rural.	No.
Lazerlere, C. H.	No.
Leelanau Mutual Telephone Co.	No.
Leighton Telephone Co.	No.
Leota Telephone Co.	Yes.
Le Roy Rural Telephone Co.	No.
Le Roy Township Telephone Co.	
Lester Telephone Co.	No.
Littlefield, J. L.	No.
Little River Telephone Co.	No.
Locke, A. J.	
Lone Pine Telephone Co.	No.
Loxley Telephone Co.	Yes. Farmers Telephone Co.
Lucas Farmers Telephone Co.	No.
Lumen & Curtis.	No.
Luther & Hoxeyville Telephone Co.	No.
Lyndilla Telephone Co.	No.
Lyons Mutual Telephone Co.	
Macomb County Telephone Co.	No. Ohio Corporation.
Manitou Beach Telephone Co.	
Maple Grove Telephone Co.	No.
Maple Grove Rural Telephone Co	No.
Maple Ridge Farmers Mutual.	No.
Maple Valley Telephone Co.	No.
Marengo Prairie Telephone Co.	Farmers Mutual.
Marsh Road Telephone Co.	No.

Name of Company.	Organized for Profit.
Martin Roadway Co., Plainwell.	No.
Martin Roadway Co., Three Oaks.	No.
Martin Telephone Line.	
Mason & Okemos Telephone Co.	For profit and mutual, both, rent at $12 per year to non-stockholders.
Mason-Dexter Road Telephone Co.	No.
Matthews, P. W. Line 14	No.
Mayfield & Deerfield.	
Mayfield Central Telephone Co.	
Mayfield Telephone Co.	
Meade Telephone Co.	No.
Mecosta Mutual Telephone Co.	No.
Michigan Avenue Roadway Co.	No.
Michigan District Telegraph Co.	
Middleton Farmers Telephone Co.	No.
Milan Roadway Co.	No.
Miles, Albert.	Farmers.
Mill Roadway Telephone Co.	No.
Millville Telephone Co.	No.
Mirror Lake Telephone Co.	No.
Misner Telephone Co.	No.
Mitchell Road Telephone Co.	No.
Monta Crum Telephone Co.	
Moore, Andrew J.	Yes.
Mt. Vernon Roadway Co.	No.
Mutual Telephone Company of Stockbridge.	No.
75*g* Newark & Fulton Independent.	No.
Neidermeier, A. E.	Yes.
Noone, John H., Pres. (Now Louis Hoenes.)	No.
North Adams Telephone Co.	No.
North Baltimore Telephone Co.	No.
North Bethany Telephone Co.	No.
North Burns Telephone Co.	No.
North Custer Telephone Co.	
Northeast Bethany Telephone Co.	No such company out of St. Louis.
Northeastern Telephone Co.	Yes. For money profit.
Northeast Leslie Telephone Co.	No.
North East Wheeler Telephone Co.	No.
North Flushing Roadway Co.	No.
North Gilmore Roadway Co.	No.
North Grant & Hersey Telephone Co.	No.
North Hersey Telephone Co.	No.
North Leoni & Grass Lake.	No.
North Marshall Telephone Co.	No.
North Osceola Telephone Co.	

Name of Company.	Organized for Profit.	
North Oxford Rural Telephone Co.	No.	
North Paradise Telephone Association.	No.	
North Perrington Mut. Tel. Co.	No.	
North Quincy Telephone Co.	No.	
North Rives & Leslie Tel. Co.	No.	
North Rose Telephone Co.	No.	
North Star Telephone Co.	No.	
North Shade Telephone Co.		
Norvell & Manchester Tel. Co.	No.	
North Western Rural Telephone Co.	No.	
North western Leslie & Northeastern Onondaga Telephone Co.	No.	
Northwestern Mason County Tel. Co.	No.	
North West Quincy Tel. Co. #1.	No.	
North West Rutland Telephone Co.	No.	
Northwestern Telephone Co.	Yes.	Farmers Telephone Co.
North Winfield Telephone Co.	No.	
Okemos & Haslett.	No.	
Onekama Telephone Co.	Yes.	
Onondaga Telephone Co.	No.	
Orangeville & Prairieville Rural.	No.	
Oregon Central Roadway Co.	No.	
Ovid Mutual Telephone Co.	No.	
Partello & Springport.	No.	
Partello Telephone Co.	No.	
Park Avenue Telephone Co.	No.	
Peninsula Farmers Telephone Co.	No.	
Perrington Independent Tel. Co.		
Perryville Telephone Co.	No.	
Pinconning Mutual Telephone Co.	No.	
Pine Creek Telephone Co.	No.	
Pinlin Roadway Co.	No.	
Pleasant Lake Telephone Co.	No.	
Pogy & West Telephone Co.	No.	
Portage Lake Telephone Co.	No.	
Porterville Onondaga.		
Portland Telephone Co.	No.	
Port Sheldon & Lake Shore Tel. Co.	Yes.	The profit if there is to be any will consist wholly of money profit.
75*h* Powell Roadway Co.	No.	
Puddigot Roadway Telephone Co.	No.	
Randolph Telephone Co.	No.	
Range Line No. 186.	No.	

Name of Company.	Organized for Profit.	
Ranney Telephone Co.	No.	
Rau, S. M. M. S. T. Co.	No.	
Ray Center Telephone Co.	No.	
Reading Telephone Co.	No.	
Richardson Roadway Co.	No.	
Richland Township Telephone Co.	No.	
Riga Farmers Telephone Co.	No.	
River Side Telephone Co.	No.	
River Roadway Telephone Co.	No.	
Rives & Leslie Telephone Co.		
Rose Center Telephone Co.	No.	
Rose Lake Telephone Co.	No.	
Rural Co-operative Telephone Co.	No.	One phone only being rented out.
Rutland Telephone Co.	No.	
Salt River Telephone Co.	No.	
Samaria Farmers Telephone Co.	No.	
Sanford Mutual Telephone Co., L'td.	No.	
Sauble Telephone Co.	No.	
Sawyerville Telephone Co.	No.	
Seneca Bimo Telephone Co.	No.	
Sheridan Roadway Co.	No.	
Sherman City Rural Telephone Co.	No.	
Shiawassee Mutual Telephone Co.	No.	
Shultz Telephone Co.	No.	
Sidney Telephone Co.		
Schaub, Simon.	No.	
Smith & Laird (Terre Haute, Ind.).		
Soper, H. E. (Lum. Rural Exchange.)	No.	
South Antrim Telephone Co.	No.	
South Bend Home Telephone Co.	Yes.	Indiana corporation.
South Bethany Telephone Co.	No.	
South Bunker Hill & North Henrietta.	No.	
South Burns Telephone Co.	No.	
South Butler Telephone Co.	No.	
South Fulton Rural Telephone Co.	No.	
South Groveland Roadway Co.	No.	
South Hinton Telephone Co.	No.	
South Ogden Telephone Co.		
South Rose Telephone Co.		
South Rutland Center Telephone Co.		
South Town Line Roadway Co.	No.	
Southwest Springfield Telephone Co.	No.	
Springborn Road Telephone Co.	No.	

Name of Company.	Organized for Profit.
Springbrook Telephone Co.	No.
Springvale Telephone Co.	No.
St. Clair China Roadway Co.	
St. Clair River Telephone Co.	No.
St. Clair Roadway Co.	No.
Stafford, Wm. R.	Yes. For whatever profit or loss there may be.
Standish Telephone Co.	No.
Star Mutual Telephone Co.	No.
Star Telephone Co.	No.
757 Starville Roadway Co.	
State Road Telephone Co.	For profit and caeaper rent. Farmers Company.
State Road Telephone Co., Hastings.	No.
State Road Tel. Co. of Henrietta, Twp.	No.
State Roadway Co.	No.
Stevenson Lake Roadway Co.	No.
Stony Run Telephone Co.	No.
Stringey Lakes Rural Telephone Co.	No.
Sugar Grove Telephone Company.	No.
Sumner Rural No. 1, (Jos. Kleis.)	No.
Summit Telephone Co.	No.
Sherman Telephone Co.	
Taylor, F. H.	An individual concern doing business to serve personal interests.
Theisen Roadway Co.	
Thompson Telephone Co.	No.
Tobey Telephone Co.	No.
Toledo Beach Home Telephone Co.	
Tompkins Exchange Tel.	No.
Town Corner Telephone Co.	No.
Townline Roadway Co.	No.
Townline Roadway Co.	No.
Townline Telephone Co.	
Townline Telephone Co.	No.
Townsend, G. S.	No.
Trist Telephone Co.	No.
United Telephone Company, Fremont.	
Van Tilburg Telephone Co.	
Vernon Roadway.	No.
Village Hill Telephone Co.	No.
Wakefield Telephone Co.	Farmers.
Wallace Telephone Co.	Yes.
Walnut Lake.	No.
Washburn Roadway Line.	Mutual.

Name of Company.	Organized for Profit.	
Washington Center Mutual Telephone Co.	No.	
Waterloo Central Telephone Co.	No.	
Wedel Roadway Co.	No.	
Weipert & Meyers.		
West Amber Telephone Co.	No.	
West Argentine Telephone Co.	No.	
West Attica Telephone Co.	No.	
West Burns Telephone Co.	No.	
West Flushing Roadway Co.	No.	
West Rose Roadway Co.	No.	
West Rutland Telephone Co.		
West Town Line.	No.	
Whitford Telephone Co.	No.	
White River Telephone Co.	No.	A co-operative farm line.
White River Valley Telephone Co.	No.	
Wilcox Telephone Co.	No.	
Willover Telephone Co.	No.	
Winn Rural.	No.	
Winsor, R. J.	No.	
Wisconsin Land & Lumber Co.	No.	
Wise Mutual (Black Ash, Ind.).	No.	
Wise Telephone Co.	No.	
Woodville Telephone Co.	No.	
75*j* Wolf Creek Mutual.	No.	
Wright Roadway.	No.	
Wausseon Telephone Co. (Northwestern Tel. Co.).	Ohio Corporation.	
Yankee Street Roadway.	No.	
Zaring Roadway.	A farmers: for own benefit.	

76 (This tabulation shows fourteen companies reporting as organized for profit. Where the company qualified the statement "organized for profit" by stating that it was "organized for cheap telephone rental," or some similar statement, it is not included in the fourteen.)

The following companies not taxed last year will be taxed for 1910:

Amble Tel. Co.
Gobleville Farmers Tel. Co.
Lake Ann & Oviatt Tel. Co.
East Saugatuck Tel. Co.

The Quincy Tel. Co. was assessed last year with the Southern Michigan.

The companies in Mr. Tarte's list of the fourth class not taxed are:

The Houghton Lake Tel. Co. (2 members, 35 miles pole line) and Leota Tel. Co. (3 telephones).

The Amble Tel. Co. reported for 1909, showing that it commenced business May 1, 1909. It will be taxed for 1910

"They have the Eaton Rapids mutual telephone, I don't know any company by that name. We had Eaton county Telephone Company, that was taxed last year.

Q. You haven't been able to find anything by that designation?

A. I don't identify the company. They have got two or three companies down in that locality, but I don't identify it by the name appearing here.

The Parma Telephone company. Location given at Parma. I don't identify that with any on the list, in fact investigation at Parma did not disclose to us a company known as the Parma Telephone company.

77 In the list of Mr. Berry, Mr. Melcher and Mr. Tarte are a number of telephone lines, I have been unable to identify by the names given. Before making the 1909 assessments I called on the three companies these gentlemen represent, for lists of their connections. They gave them, but these lists contain some names that were not on the lists they then furnished. Some of the names on the lists furnished I was unable to locate through the use of the mails, though in some cases we sent three or four letters by first-class mail, and when that did not reach them at the address given we tried them at a different address.

Of the three roadway companies listed by Mr. Berry as being taxed last year, none will be taxed this year. I am under the impression that none of them should have been taxed last year. I think there was an error in understanding conditions; two of them reported cost of property or construction under "receipts"; the third has not reported for 1910.

I have been connected with the tax commission eight or nine years, assisted in the telephone assessment last year. In making the assessment we procured an inventory of the property of companies, either by returns by the companies or by inspection by our field-men.

In addition our men inspected the various properties to determine the condition they were in. Of the 224 companies assessed last year, all but five were personally inspected.

The field-men had instructions to make an inventory of the property inspected and to the best of my knowledge and belief, did so. After securing these inventories we procured from the telephone companies that were manufacturing equipment, prices on the different items of property, which were applied to the units which we found existed in the different properties, and their values were computed thereby.

These were presented to the board.

"Q. Have you any method or means of telling us the cost of making that appraisal of those 219 companies?

Mr. CAMPBELL: That is objected to as immaterial.

A. Yes, we have a record here in our office of the cost of salaries and expense, and know the men that were employed in that work exclusively, and I know the approximate time because the work was under my direction here of the men in the office, we put their time in, and computations, etc.

Q. What was the cost of the inspection and appraisal?

A. The cost as computed by me from my knowledge in the matter was $6,498.76. That includes the salaries of the men
78 exclusively employed, the binding, printing, postage, telegraph calls, etc., and stenographic help, proportional.

Q. Does that include anything for a portion of the time of the commissioners in making the assessment?

A. No, sir, nor for the secretary.

Q. Nor for the secretary of the board; does that include anything for the Auditor General in making collection or the State Treasurer in making collection, for their time?

A. No, sir.

Q. For the postage that is necessary to notify these companies of the assessment?

A. That only includes as closely as I could estimate, and I am probably in the best position of any one to figure it out, just the cost to those people that were engaged on the work directly; nothing else is added to it. No administration expenses of any sort.

Q. Those that were engaged in it exclusively at the time?

A. Yes, sir.

Q. Taking as the basis of the value, the reports that were received by the commission for the year 1909, of all of the exempted companies, will you tell us what the tax on those companies would have been if they had been taxed?

Mr. CAMPBELL: Objected to as immaterial.

A. You mean if I take all of the companies that were exempted on Exhibit B?

Q. Yes, and take as the value of them the figures that they reported?

A. They reported $110,818.64. That is for 332 companies. Last year's average rate of $20.67 was the highest we ever had. The tax on that would have been $2,200, if it was assessed at full value on that amount.

Q. In that did you add anything for the companies that did not report a value?

A. Yes, sir, I figured that there was 332 companies reporting $110,818.64. The average reported cost was $333.80. The estimated cost of property for the 435 companies based on that average would have been $145,203. Based on that average rate of $20.67, the tax produced would be $3,001.25.

79 Mr. CAMPBELL: This is all subject to the objection which I made before.

Q. Have you made any computation to determine how much it would cost to make the first assessment and subsequent assessments on these exempted properties?

A. We examined 219 companies last year, that is as close as may be, and the cost was an average of $29.67. If we would assume that the 435 companies would cost that much for each one of them, the cost would be $12,906.

Q. That is of the first assessment?
A. That would be for an inspection; such work as clerical work or a first assessment.
Q. And does that count anything for time of the Board in making the assessment, or the time of the Auditor General or the expenses in the Auditor General's office in making collection?
A. I haven't made any estimate outside——
Q. (Interrupting). It does not include those things?
A. No, sir.
Q. So, according to your figures based on the experience of assessing 219 companies, the cost would be something above $12,000, assess the companies that are exempted on the list, and the return would be about $3,000 a year, if we take the reported figures as the value?
A. Yes sir.

Mr. CAMPBELL: The same objection.

Q. Now, what would it cost from year to year to carry on that assessment?
A. To keep the assessment up from year to year I would have to have help; I am working night and day myself now, I don't know how long I will stand it, but that is all right, but I would have to have additional help, and to keep it revised from year to year you would have to have traveling expenses, the cost would probably be $2,300 $2,500 additional for this office, that is, the traveling expenses and the one extra assistant, it would require that at least.
Q. And that figure doesn't count anything for the time of the commissioners, the time of the Auditor General, what you would lose in course of collection, what it would cost the state to enforce them if they were not paid?
A. I have made no attempt to estimate that.
Q. Now, have you made any attempt to determine individually the amount that it would cost to tax one of these companies?

Mr. CAMPBELL: The same objection, immaterial and incompetent.

A. Yes, I estimate that on account of this extra help, this extra help alone, would make it cost an average of $5.75.
Q. You mean $5.75 per company?
A. Yes, sir, that is based on this 435 companies.
Q. That is to carry on the assessment?
A. That is to carry on the assessment.
Q. Does that cover anything to take care of what you have lost making the first assessment, where it cost $9,000, more than you got out of the tax?
A. Oh, no.

Mr. CAMPBELL: That I object to as incompetent and immaterial.

Q. So you would have to add a considerable amount to take care that investment, would you not?

Mr. CAMPBELL: I object to that also.

A. Quite a considerable.

Q. So in order to make the tax profitable it would have to be considerably more?

Mr. CAMPBELL: I object to that as an argument.

Q. (Continuing:) Than the amount of $5.75 would it not?

A. Yes, because $5.75 only takes care of the extra help that I should consider we needed on account of needing a more complicated report than we are getting.

Q. From your knowledge of the cost of assessing the companies last year and the probable cost of assessing the companies not taxed, what can you say as to whether the taxation of those exempt companies could be carried on at a profit or not?

Mr. CAMPBELL: I object to that as incompetent and immaterial.

A. I don't believe that it could.

Q. It would cost more to tax them than you would get out of them in taxes?

Mr. CAMPBELL: The same objection.

81 A. Yes, if you have got to consider the collection of it and I haven't considered that."

* * * * * * *

"Q. After that careful investigation and appraisal and fixing of values based on it by the State Board of Assessors, what can you say as to whether the values fixed by the Commission for those companies who did not have in their hands property of the Michigan State Telephone Company, ran above or below the values which the companies reported? * * *

A. The assessment ran below.

Q. They ran below almost uniformly, did they not?

A. Quite so.

Q. Almost universally?

A. Yes."

The tax on the gross receipts of companies not taxed as shown on their reports would be $887, though quite a number of the companies did not report gross earnings.

I was the nominal head of the investigation of these telephone companies from this office last year, and from the reports of the men, in the line of my work, became more or less familiar with rural lines, the character of their operation and ownership. I found it quite general through the state that the individual farmer on the line owns his own telephone instrument, and in cases, a part of the construction.

Cross-examination by Mr. CAMPBELL:

When we began the work of assessment we sent to the companies a form for the annual report, also for inventory. (The blanks sent for inventory marked complainant's Exhibit J.) This blank went to practically all companies taxed and to some roadways, not taxed. I obtained my list from Messrs. Tarte, Berry and Melchers, and from public records. There were approximately 435 companies in 1909

not taxed. The inventory blank went to companies having
82 40 or 50 subscribers and up, I did not send inventory blanks to companies having less, unless I learned of their being a commercial company or a company that I had some idea of being taxed.

There were a considerable number of inventories of non-assessed companies returned, perhaps 30 or 35.

I would not say that we made no attempt to investigate the companies not assessed; our men had instructions to keep their eyes open for them, and we had the annual reports coming in.

We also sent out blanks for annual reports. (Large form, marked Exhibit K; small form marked Exhibit L.) We intended to send the large from to those having 40 or 50 subscribers or over. The other form was sent to the other companies.

The figure- I gave of the cost of making inspections are the average for the companies taxed, I didn't take into consideration the larger companies like the complainants. I would not say that the cost of inspection of a roadway seven miles long with ten telephones right around here, would cost $29.

I have thought over the fact of those exempt being small companies, and that, we have estimated, would be pretty close for them; the reason for saying it would be as expensive for inspecting a small line as as one larger is this:

"A manager of such a telephone company or some party that is intimately connected with the property and knows it, could be easily reached; in case of roadways it is pretty hard work to find anybody that knows anything about the property."

It would be a physical impossibility to examine every part
83 of the property, and I don't think the inspectors attempted it. They could not tell the condition of every foot of the line. The inspectors had instructions to examine the property as fully as time and opportunity would permit. The assessments of taxed companies excluding those having M. S. T. property in their hands are quite generally lower than the figures the companies reported.

Where there was property of the M. S. T. in these companies, it was included in the assessment and would be in addition to any cost reported by the companies themselves.

We derived our information as to the M. S. T. property from Mr. Berry and the individuals or companies; we took it as it was operated. We did not attempt to separate the ownership.

For 1909, the exempted companies reported a value or cost of $110,818, and gross receipts of $29,568.

In many reports there was no cost of property reported. I added for them the average of those reporting.

I based my computation upon the accuracy of the reports. The Adair Roadway, with seventeen subscribers, reported cost of $84.21. It could and it might not serve that number of subscribers with that cost of property. In some cases the company owns only the wire and apparatus and paid contact rental on other people's poles.

Whether a telephone company with forty-three phones could cor-

rectly report cost of property at $147, depends on who owns the telephones. A line can cost anywhere from $10 to $12 a mile up.

In the case of the Cambridge Junction with eight miles of wire, twenty-one telephones and a cost of $5, I claim that is pretty cheap.

84 I think the statement made in the question, that the reports are in many respects inaccurate would apply to all the reports.

The board did assess some without other information that I know of than the report. The Crystal Telephone Co. for 1909, reported cost of property as $175. For 1910, with telephones increased from 83 to 106, and gross receipts increased to $1,075, with reported cost of property as between $2,700 and $2,800. Will be taxed for 1910.

The Brooklyn Switchboard Association was not taxed for 1909. Its gross receipts this year were reported as $136. Running into that switchboard are many rural or roadway lines. I understand it also serves lines in Brooklyn. If the switchboard and rural lines were owned by one organization, the income would be more than $500 a year.

The roadway lines owned by the M. S. T. were included in its assessment. If it should transfer the ownership of a roadway line to the farmers, it would then be exempt if the earnings were under $500 a year, as I understand it. There have been instances where the board has required a new or further report.

From the Lyndilla Tel. Co. we required an additional report this year. The first report showed they had not included their assessment to members. The assessments were taken into consideration in determining whether the gross receipts exceeded $500. Most of them have no other means of getting money. In many instances the reports show no income.

In those cases, if we ascertain that the assessments and other income exceed $500, we would tax them. The gross receipts from operation including assessments, constitute a basis of determining whether the company would be assessed, I believe. The Alcona County Mutual, a partnership, had gross earnings for 1909 of $505, if those receipts had been $495, I assume the company would

85 not have been taxed. It made no difference whether it was a partnership, corporation or individual, which operated the property.

Redirect examination by Mr. WYKES:

I think the figure which I gave as the average cost for examining assessed companies last year of $29, would be very close to what it would cost to examine the exempted companies. I took into consideration that the roadway lines are not as accessible as the other properties, being so located that in many instances it would take more than a day's travel to get in and a day's travel to get out.

For the companies which reported no cost of property for 1909, I added the average cost of the 332 companies reporting cost.

Since, to confirm this average, I examined such 1910 reports as were in; for companies not reporting a cost of property for 1909,

I found that they averaged $324, or $8 or $10 less than the average I added. Whether a company like the Adair Tel. Co. could operate seventeen phones on a cost of $84 would depend upon the ownership of the line, poles and instruments. I have found it quite general for them to use the poles of a line already in for contact, and pay a contact rental.

There is no reason that leads me to believe that the reports for 1909 were more inaccurate on one subject than on another. The same conditions which would lead to inaccuracy in one set of figures would lead to them in another. In saying these companies have earnings less than $500 we confine our information to these reports, and, we don't know that their earnings fall below that figure, except through that data.

Assuming that the reports are open to Mr. Campbell's criticism,
I don't know whether if the true earnings were reported,
86 they would be above or below $500. If they were above I
believe the board would have assessed them. I don't understand that there would be any chance for the roadway companies to conduct a toll business. It would be possible over the line where it was owned by the M. S. T. In a majority of cases there is a difference in operation between the roadway and M. S. T.; one in that the M. S. T. operates the entire system, while the rural line operates no exchange.

There is also a difference in the method of construction. Quite generally the farmers get together and build their lines as cheap as they can. There is also the difference that one is operated for profit and payment of dividends and the other is not, but merely to get cheap service. There is also the difference that on roadways the individual ownership of telephones is quite general, also the farmer often owns part of the construction, individually. The cost of construction is not necessarily the value for taxation.

The cost of production affected by depreciation, would be a consideration, but in addition I should take in consideration the earnings and operating ratio. The only way I am able to say whether any of these companies are exempt or not, is to take the reports as the basis.

Recross-examination by Mr. CAMPBELL:

I can give instances of farmers owning individually a part of the construction based on knowledge from the field-men. In saying the rural lines have no toll lines I mean they don't conduct a toll business themselves. The persons along the line would have opportunity to have toll connections through the exchange. The different service
which the farmers on a roadway line have from the roadway
87 lines owned by the M. S. T. is the benefit of a cheaper rate.
I think as to toll connections he would have precisely the same condition he would as a subscriber. In these reports I know the farmers belittle the amount of time used, but I don't know whether it is included.

In some cases in reporting the cost they have included labor; some cases I don't know about. In the inventory blank were head-

ings for "material" and "labor," and they were taken into consideration in the assessment. I don't know it to be a fact that generally the smaller companies, built by farmers, include in the cost reported nothing for labor. I don't know whether they included it or not.

Redirect examinatiton by Mr. WYKES:

The Adair Co. which reported $84 cost of property, serving seventeen subscribers, I find owns but two miles of pole line, the rest of their nine miles of wire is on rented contacts.

If as testified to by complainants' witnesses, the reported costs of construction was two to five times less than the actual cost, I have no reason for believing the item of gross receipts would not be affected with incorrectness in the same ratio. The same inaccuracy is liable to exist in one as in the other, and if it existed in that ratio it would spoil my Exhibit B by taking out most of the companies listed.

Recross-examination by Mr. CAMPBELL:

I said that the reports were just as liable to be inaccurate in the item of gross earnings as in the cost of property. In the case of the Adair Co. the property of the M. S. T. on which they had their contacts was assessed to the M. S. T. I don't understand that we assessed the property of the M. S. T. in the hands of the roadways; we had Mr. Berry's list showing how many telephones he had
88 in the hands of other companies; where property was in the hands of roadway companies we didn't attempt to separate the ownership. We assessed the entire amount to the assessed company and not to the owner.

By Mr. WYKES:

The assessment of the M. S. T. is $11,500,000. Their cost of property, $18,000,000. I don't know whether that was the value of their physical property.

If there was any motive in reporting a low figure I should imagine it would find expression in the gross receipts, and if they were inaccurate there it would be inaccurate on the other.

The assessed value of the M. S. T. was about $650,000 greater than the inventory.

"Q. The earnings of the company which were capitalized to fix that value, included the earnings from these parts of the system that were in the hands of other people, did it not?

Mr. CAMPBELL: I object to that as incompetent, immaterial.

A. Well, I should say that it did."

The state board took everything, including earnings, into consideration.

HENRY A. BLUM, a witness for defendant.

Direct examination by Mr. LAW:

I am a farmer; have lived at Novell, Jackson county, twenty-eight years, and know the Brooklyn and Wamplers Lake Tel. Co.

It is a farmers' line, incorporated; has been in existence eight years; it is a farmers' organization for their own special benefit to talk to one another. It was organized to build a telephone line to furnish telephone service to themselves.

There are twenty-five members; I have been the secretary five years. In the first instance we got together, formed a kind
89 of company and got the patterns and went on and built the line ourselves. We hired no one to assist; we done that with a kind of "bee" like, got together for themselves whoever could, and put it up.

The poles were tamarack, some oak, and each man furnished a proportion of the poles from his own swamp, and I estimate that they were worth $.30 each, we used No. 12 galvanized wire and installed Stromburg instruments. The line is approximately fourteen and a half miles long.

Every man bought his own instrument as he felt able. When we were all done they called a meeting and figured out each man's proportion according to the number, and he paid.

I do the repair work for which they pay 20 cents an hour, dividing the expenses among the members once a year by assessment. We connect with the Brooklyn swb., an association which is all farmers; I think incorporated. Other rural lines come in that exchange.

We haven't any arrangement with the exchange really, every phone owner has a share in this switchboard company. The different lines elect a board and officers; send a representative to represent their line; they went on and bought the switchboard and assessed each phone owner his share. The only switchboard expense is for the operator to whom we pay $2.50 a phone a year.

The treasurer on each line collects this and pays it to the treasurer of the switchboard association, we haven't any arrangement for toll charges on our rural lines. We pay regular tolls for long distance services, which is paid by the individuals to the operator monthly.

The operator is elected at the annual meeting by the representatives of each line. There are approximately 300 telephones into that exchange. I have been around the country a good deal
90 and seen many of these other lines.

The construction is similar to our line, by the farmers using tamarack and oak poles and the maintenance and division of the expenses is the same. Our line is not in very good condition. When a pole breaks down or rots off we reset it the quickest way we can do it. Almost every windstorm, more or less of the poles come down. We do not climb the poles to string wires, but use a ladder, and I don't feel perfectly safe even then. I found some of the poles rotted off two years ago and every year some of them are getting in worse condition. The wires are awfully slack because the guy-wire is nothing but No. 9 wire, anchored with a stone or tied to a tree, and many of them are broken or pulled off. Some of the wire is as good as when put in.

Very occasionally you see poles where they lop over and the wire holds them up. The character of construction of the lines in the

vicinity of Onstead is the same as I find them all over on these rural lines. Most of the lines in that vicinity have metallic circuits.

I think the ownership of telephones on the other lines entering the Brooklyn swb. is the same as on our line. These lines are constructed and maintained as cheaply as possible, and the service is good, bad and indifferent. There are days we are not troubled much, at other times the neighbors have to help each other out to get central or a neighbor.

The telephones in the neighborhood of Onstead are owned and operated by the farmers themselves.

Cross-examination by Mr. CAMPBELL:

Our line was organized eight years ago with twenty-five members; constructed in the main road from Brooklyn to Clinton; we afterwards incorporated.

I have been a patron from the beginning; it has a presi-
91 dent, secretary and treasurer. I helped build the line; none of us had had any experience. We patterned after the rest of them.

All of the work is done by the people along the line. They get somebody to mark for the poles about ten yards apart, and divided up so each man was to furnish eleven poles.

The cost of the poles I gave includes getting them out. I thought that probably would be about the cost of a pole. The cost of labor was not taken into consideration; it was donated. The Brooklyn exchange was not organized at that time; there were then two exchanges there; the Brooklyn exchange was organized a year or so afterwards; we first ran into Avery's exchange

I keep the line in repair and am allowed 20 cents an hour. I live on the line and own a phone. We have not put in any new poles; when they rot or blow down we put them in the ground again.

I have reset six poles since our annual meeting in March. That is an average number that would have to be reset. The switchboard association has officers and a board of managers; it has no property except the switchboard.

The operator or association is paid $2.50 a phone. I doubt the Brooklyn having 600 phones. The lines into the Brooklyn swb. are about all on the same plan and, I think, are allowed to fall to pieces just as ours is.

We assess against our members for repairs $14 or $15 a year. My idea is that the Brooklyn swb. is made up of the individual subscribers not of the different companies; each company sends a representative to its meetings. The Brooklyn swb. is not incorporated. I don't know as we have ever had to raise more than $13 or $14 a year for expenses, all I know about the lines near Onstead is what
92 I see of them. They own their telephones individually in that locality.

The telephones run about two to the mile generally. For long distance service we connect with the Bell.

Redirect examination by Mr. LAW:

We furnish no telephones to any one but members. Each member pays his share of the line when assessed. If a member sells his

farm his right goes with it under the by-laws. We cannot sell a share to another individual without two-thirds majority; we have no shares of stock to sell to anyone not members of the association.

My nearest neighbor is on the junction line, a different line running into the same exchange, their method of making repairs is the same as ours.

Once in a while when the brush and trees push the wires we all get together, and cut the brush out, with no charge.

WILLIAM M. LAWRENCE, a witness for defendant.

Direct examination by Mr. LAW:

I operate the exchange of the Brooklyn swb. association. It is not incorporated, but was built by farmers and persons of the village for the mutual benefit of one another. We have what we call twenty-five rural lines; a total of sixty-nine lines; the plans of the lines are private and public lines in the village, some of them extend a short distance into the rural districts.

Of heavy rural lines we have about twenty-five

They hire me by the year. I get $2.50 switch fee per phone for switching one phone and one line to another. They pay to the treasurer of the switchboard association; I draw my salary
93 regulated by the number of phones. The members of the switchboard association employ me at their annual meetings, to which each line sends a delegate.

Two or three of the rural lines are incorporated, but the great majority of them are not. The method of construction is, as many as want to build a line form a body; have a meeting and organize and go ahead and construct their lines themselves; that is the general rule with all the phones that run into our exchange; when they get all through each one is assessed an equal amount to pay for the line. All lines connecting directly with Brooklyn Switchboard have 325 phones, which includes rural lines, village and all. I am familiar with the physical construction of these lines.

They use mostly tamarack poles with a few oak and here and there a cedar. The construction of all the lines is practically the same, with the exception of the Brooklyn and Wampler's Lake, which is a 15-mile line. That is kept in repair and has the best line of poles. It is far superior to the others—there is no comparison whatever. The service on their line is the best of any we have. The cost of the switchboard was $220; when they started out, each individual who had a telephone and wanted to get into the switchboard association paid a dollar membership, and in that way paid for the board.

New rural lines are taken on from time to time and when connected with the switchboard, pay a dollar a member and then the maintenance charge of $2.50. I am employed in no other capacity than as operator and have no connection with any other company, except the M. S. T. For toll business we connect with the M. S. T., and the association gets 25 per cent of the charge up to 40 cents upon outgoing calls. Of the 25 per cent I get 15 per cent as my pay; the

10 per cent left has defrayed all of the switchboard expenses in the four years we have connected with the M. S. T.

94 Repairs are made on these lines very seldom. The line practically takes care of itself. The physical construction of the lines of the Clark's Lake Tel. Co. is the same as ours; I have been over some of them.

They are very poor. Our service on the rural lines is very poor. If we want to get a party at any distance,—three or four miles—we call one party and have him call some one else, and they keep calling down the line until we finally get him; as far as ringing him ourselves, we cannot do it on a majority of the lines. On all our lines the farmers own their own phones. Our exchange is connected with Cement City. They connect with the M. S. T. the same as we do.

Cross-examination by Mr. CAMPBELL:

I have been connected with the Brooklyn swb. five years. It was organized one year before that. We did not construct anything for the Brooklyn switchboard association. The farmers own the switchboard by paying a dollar apiece.

The individuals own their own telephones, their own lines and their own switchboard. Each individual subscriber has a dollar in the switchboard, and they pay $2.50 a year to me for switching accommodations. I am the employé of the association.

It has three officers. The association meets once a year, and elects officers; the delegates vote for the operator, after which he enters into a contract with the association.

Which fixes the compensation for the operator at $2.50 per year, which I receive. I also receive 15 per cent of the outgoing tolls. The association deals with the separate companies as companies and collects the amounts from the different rurals.

The money goes into the bank account and the treasurer pays me according to the contract. The expense for supplies for the

95 switchboard and terminal and cable poles are paid by the association.

On the tolls I give them their 10 per cent and keep my 15, that is the only money they collect, the treasurer handles this 10 per cent and my salary.

I collect for the toll messages myself. There is not much use in having a treasurer or president. The switchboard's share of the commission is about $84 a year. The collections from the members amount to $731 a year. That money is for me and is paid to me in monthly installments.

We connect with Cement City over a rural line, and also over the Bell. We make connections all over that part of the country for miles with rural lines. We have the privilege of all the surrounding country; with Cement City and Clark's Lake.

We also connect with other switchboards. We can connect a subscriber with any of these other lines through Cement City; so long as it is over a farmers' line, there is no charge at all. We connect with eight other companies besides the Cement City and Clark's Lake.

There are 25 heavy rurals into my office direct. They have from 16 to 25 telephones each. Our 69 lines average about seven miles,

though we have them fifteen miles long. The average would be about two telephones to the mile. The construction on Mr. Bulm's lines commends itself to me; it is not an excellent line, though it is the best we have.

The switchboard has a surplus out of the 10 per cent of toll collections; they are saving it to buy a new switchboard.

Redirect examination by Mr. WYKES:

I didn't mean that all the 25 lines carry 16 to 26 sub-
96 scribers, I meant that we had lines all the way from 16 to 25.

By Mr. CAMPBELL:

I cannot estimate how many telephones outside the 325 we can reach, there are hundreds and hundreds of them.

The method of construction of all these rural lines that I am familiar with is the same. The lines are not the same; the lines that run into Cement City are ground lines, but the poles are in the same condition as ours, perfectly horrible. They are built in the same way by farmers. That is general through our section of the country.

M. A. PORTER, a witness for defendant.

Direct examination by Mr. WYKES:

I live at Northville. I was employed by the State Board of Assessors last summer and to March 15, 1910, as a field-man, investigating telephone properties. I had a previous varied experience with telephone lines and companies; had operated and constructed some lines.

I have been connected with telephone work eight or ten years. My work for the tax commission was making an inventory of telephone properties and investigations with regard to the conditions covering the two southern tiers of counties of the state.

I made a written report to the commission which is now a record of the Board of Assessors. It was an inventory and appraisal for getting the amount of property they had and its condition. I listed everything that went into the construction of the lines inspected into their component parts and made as complete investigation of the properties I was assigned to examine as time would permit. We got our infor-
97 mation from the offices or by going out on to the lines; those of any consequence we went into quite thoroughly and drove over the lines somewhat.

The figures for the items we got from the offices. Once in a great while they did not have them in the offices; we went out and checked them over. I endeavored to, and thought I did, make quite a thorough investigation and complete inventory and those were my instructions. The information procured and reported to the Board of Assessors was to the best of my judgment, reliable and accurate.

I found a good many non-assessed properties intermingled with those examined. I found them by inquiry from one office to another. Those I thought of any importance whatever I would personally investigate. I drove on to a good many of them. When I ran on to

one of those companies which I investigated, I generally reported the name of it to the board. That was my instructions. In this investigation I became familiar with the manner of construction of the roadway and rural lines; with the manner of keeping them up, of their operation, the extent of depreciation, the building of them and the ownership.

This business of the roadway companies is of a limited number of years' duration. They first came in something like six, eight, or perhaps, some of them, ten years ago. In the territory I was in, most of them came into existence in the last five or six years. The nature of the organization is this:

"Some enthusiastic farmer gets the rest of them together in meeting and they plan to build between themselves a telephone exchange or telephone line on their road, taking in as many members as they may see fit at that time. I found that generally the case; they all organize about the same way and deposit about so much money and then do the work themselves; some put it up much cheaper than others."

98 (Objection by Mr. Campbell as incompetent, immaterial and hearsay.)

My information was practically all obtained from investigation in the line of duty for the Board of Assessors.

I found it quite usual for the different roads to organize into different companies, each road as a company by itself; from each company is chosen a director which constitutes the Switchboard Committee. Each member is assessed for a certain amount through this director to procure and maintain the switchboard through which they get their service.

The line is maintained by the roads individually. In places they select some farmer to do it—in some they do not. Somebody goes along the road, sees a line in trouble and fixes it. If not, some one that wants to use the phone that day, starts out and fixes his line. These combinations result in associations like that at Brooklyn.

That at Munith is a little different. That is an M. S. T. board, by Mr. Carle, who gives them service and charges so much per subscriber. It is made up of different roadways the same as the Brooklyn, except as to the board.

At North Adams an individual owns the board and some little property in the town and a few phones he charges a fair rental for; then there is what is called the North Adams Tel. Co., owning all the poles and wires in the town; then outside are the roadway companies who pay wire privileges over the North Adams Tel. Co. The roadways there are the same as any roadways, except they run into the North Adams Tel. Co., which terminates at the North Adams Tel. exchange. The North Adams Tel. Co. owns the poles and wires inside the village and has a very few telephones; they connect the roadway lines with the switchboard.

99 The purpose of the farmers in organizing in this way is cheapness, and the matter of cheapness runs through their entire operations. The telephone lines vary all the way from

wire on a fence post to fairly good poles. I examined some that had miles of wire, either on fence posts or set posts of their own, and others that had very inferior tamarack or oak poles. They get them right out of their own woods, any place they can. The usual wire is galvanized fence wire.

The idea is to get up the line as cheap as they can. In a few cases they tell me they were unable to get any company to build in to them, and built as a means of getting service. I found it to be common in all rural lines in the south part of the state, that they are very much depreciated. On one line I drove over about six miles and saw fifteen or twenty of the poles lying on the fence or propped up against it and many places where they got stakes and nailed them around. In other places I have seen many where they took stakes out and spiked against the pole. Other places where they have cut off poles and reset them, and other places where they have put in new poles.

They do not keep them maintained very closely and the practice seems to be to repair them only when they absolutely have to. The life of a tamarack pole is five or six years in some parts of the state, to twice that in others. The wire would not be good for anything to use after the pole was once gone.

I found a few places where the farmers had each built part of the construction. In the part of the state I investigated the larger percentage of telephones are individually owned. Each man buys and maintains and is responsible for, his own instrument. I found some pretty good lines and some very poor indeed. I cannot call to mind any place where I found the wires guyed up as the Bell or Citizens would do it.

I have seen them guyed to fence posts, to stones and small trees with just a piece of the line wire, and the poles lying in every direction, while the large companies' poles stand up straight. The poles on the roadways vary, some as low as two-inch tops, and on a line where I took the average it was five-inch butts. I found many places where they ran on contacts with the poles of other companies.

Cross-examination by Mr. CAMPBELL:

I became manager of the telephone company at Northville nine or ten years ago. They own the lines in the village and lines extending six or eight miles out. I was manager, and during the time carried on other business as well. I have been employed in the last five years by different telephone companies.

I superintended the construction at Northville. After first employment by the tax commission I assisted in the office a few days and after that went out into the field. From the 1st of August until December I was in the field.

(Witness describes his investigation of various lines mentioned.)

I did not count the various items of property; I made up the inventory from the length of line and statement of the manager. As a general thing we took the manager's word for the inventory after going out and taking the measurements to see if his distances

and the number of poles to the mile was right. I did not go over the entire system of any of those lines and count all the items of property. We had to take the statement of the manager for the length of the lines too in many cases, as well as the number of telephones and the ownership. At Laingsburg we spent over a day. It was a good sized plant. We spent three days in Adrian—that is one of the large plants.

101 The information arrived at there was obtained in substantially the same way as at Laingsburg. On this first trip I was on an educational tour with Mr. Brown, trying to instruct him. That trip took at least two weeks, and we made two reports.

I was inspecting companies likely to be assessed. The trip was laid out for us from the office with a list of the companies, to which we received additions from time to time. I cannot now give a list of the companies I went to. The smaller companies about which I have been testifying were lines that I observed casually as I went through the country. I inspected some of the smaller companies. I cannot say how many. I presume between six and twelve. I tried to get the same information for them as for the larger companies.

I think we were instructed to examine certain small companies, e. g. the Fayette and Hillsdale, which is purely a farmers' line of 300 or 400 telephones, but not all in one organization. I went to the switchboard offices for information.

I only examined those rural lines in a casual way. The information as to individual ownership of telephones I derived from the switchboard officers and do not know where they obtained their information, unless from their patrons, or those in mutual agreement with themselves. I observed the roadway lines through Jackson, Lenawee, Hillsdale, Calhoun and Kalamazoo counties. They varied mostly, some having fair, some poor poles.

They run about the same, as a general thing. When I said they vary, I meant the poles in the line; you will find some large poles in the lines. These telephone lines are built much as houses are built, the individuality shows in the line and depends a good deal on the man in charge. If he were mechanically inclined and had some pride in his line it would be better kept up. It is rula-

102 able, I think, that some one man looked after the line.

The farmers got together and formed some sort of an organization, sometimes incorporated and sometimes not, though in all instances they maintain an organization. I found lines on rented poles at Hillsdale, Jonesville, and Adrian.

Being in instances where there was another telephone company having a line of poles. I am not able to say how many instances of that kind there were, nor the arrangement. This condition also existed about Benton Harbor where several companies have the agreement.

Redirect examination by Mr. WYKES:

It would be hard for me to value these roadway lines by a fixed unit price per station which would fairly value them without having inspected the lines, though it could be done at a fair estimate; it

would be pretty difficult to do that definitely to pin to. There would be an element of "I guess so." It would be simply a guess. I found a variation between the best and poorest of these lines. Some would cost twenty times as much as others. The poorest were very poor. There was a great deal of poor construction in the territory I went over.

T. A. McCORMICK, a witness for defendant.

Direct examination by Mr. WYKES:

I live at Detroit and have been connected with the State Board of Assessors as field-man since August, 1909. I examined telephone companies, beginning about August 1, 1909.

I covered the northern part of the state north of Muskegon and Bay City, and continued my work until the first of 1910. My work in procuring inventories was the same as Mr. Porter's, and I made reports on blanks furnished me, which are in the Board of Assessors' office. I attempted to make as full and complete inventories as I could in the time given.

I got my information from seeing the lines, talking with the managers and from maps and satisfied myself it was reasonably accurate. Where I could not get the data at the office I made sufficient investigation of the line to determine what the inventory should be and I went out on a good many lines. In going out on them I came in contact with a good many rural and roadway lines.

I became sufficiently familiar with them to know in general the method of construction, operation, organization and character of ownership. The method was for the farmers to club together and build their own lines generally. Sometimes the farmers would get together and build the lines and at other times they would build part and somebody else the rest, though they generally built them together. After being built, in some cases, each farmer took turns caring for the line. In other cases, they would select a member to take care of it, though very few of them took care of the line at all, until a telephone would go out of service, when they would go out and see what was the matter.

They did not keep up their maintenance very closely. This was generally the rule on roadways. The controlling element in the organization, construction and maintenance of these lines, was cheapness. They built their lines as cheap as possible. It seemed a case of anything to get telephone service. They use mostly native poles—in the northern part cedar—generally the cheapest wire. The poles were mostly two to four-inch tops, the latter being a large pole. We found a few five-inch tops. Most of the companies claim six years as the life of a tamarack pole. We found some of them on the ground; most of them are rotted.

The lines around Mason had been up about four years, and in most places were very poor. After being north I went into other parts of the state, around Hastings, Lapeer and Mason. In the lines out of Hastings the construction was poor, with small tamarack poles. In the Union Company's territory they had pretty fair lines. I be-

came familiar with the character of ownership, and instruments, and found those mostly to be owned by individuals. In some places the company would own part of the phones.

I found it very common for the individuals to own their own telephones. I found there was a great variation in the character and depreciation and original cost of these lines. The lines north might last twice as long as those in the southern part, and one line would have cost four to six times more than another. I found a few instances where they had contact with the other company's poles.

Cross-examination by Mr. CAMPBELL:

I worked for the M. S. T. eleven years in Detroit. I first went into the field in August and inspected the line at Alamo. I do not recollect what kind of report I made. I got the list from the manager. I only went over part of the lines. My report was made up from information furnished by the officers and such inspection as I made of the line.

We were instructed wherever we ran across any company to make a note of it and report it to the office. Such inspection as I have made of the smaller lines was generally casual when I was looking at the others. There are very few roadways in the northern part of the state. Those that I saw were fair. The only one I
105 recall was at Kalkaska. I saw several at Lapeer.

I have made notes of different roadway lines, but did not fill out the blank for them. From September until December I was looking at the lines south. I cannot tell the actual number I inspected, possibly twenty-five or fifty.

Redirect examination by Mr. WYKES:

When we were sent to a particular place I believe we had a list of all lines centering there, whether roadways or not, with instructions to find out about them, and whether they were large enough to be assessed, and we made sufficient investigation to determine this. We found very few of the officers of the roadways.

A good many of the smaller companies were remote from railroads and difficult of access. Most of the roadways lay in the southern and central part of the state. I have recently been on some of them. I was upon lines Nos. 1 and 2 at Mason a week ago. The poles were starting to rot. The construction was poor and cheap, and the phones were individually owned. Line No. 1 was about five and a half miles long, and on line No. 2 there were two miles of poles and seven miles of rented contact.

That line has been constructed four or five years, and they believed it would go down in about two or three years, so they would have to rebuild it. I was on some lines out of Hastings about a week ago. I went on the state road line; a farmers' organization, two and a half miles long, with ten members. Those over at Mason were farmers' organizations all built the same way. At Hastings the individuals owned their own telephones.

The line condition was pretty fair at Hastings, with poles larger than in some sections. They connected with the Citizens. I have

recently been on the lines out of Lapeer. On the Mayfield and Deerfield there are eighteen subscribers; it was a farmers'
106 organization with tamarack poles and poor construction. The poles were in good condition, the line having been put up recently. It was a mutual proposition. The M. S. T. owns the telephones there.

I saw three or four different lines out of Lapeer, and went over them, the Riverside, the Mayfield and Deerfield, Mayfield Center, and Elm Grove. The Mayfield Center had thirteen members, with three miles native poles and fair construction. The line had been put up in the last three years. The M. S. T. owns the instruments.

The Elmgrove is five and a half miles long, with thirteen subscribers, a mutual proposition and good cedar poles. The Riverside a mutual proposition, one and a half miles long with telephones owned by M. S. T., was native poles with poor construction, about three years old.

Out of Hastings I was over the line of the East Irving and Hastings, which was mutual, ten members, with native poles and poor construction; built three years. I also saw three or four farmers' lines, which were all poor construction, tamarack poles and cheap wire. I also saw another line at Mason recently, with poor tamarack poles, built four or five years.

I also saw the telephone lines around Bancroft, the telephones on which were mostly owned by individuals. I went partly over one of the lines which was tamarack poles, and poor construction.

Recross-examination by Mr. CAMPBELL:

I went over the entire lines 1 and 2 at Mason and the Mayfield Center. The notes I made on the latter were "light tamarack poles, twenty-eight to the mile."

I call that a pretty fair line for such as it is. I also went
107 over the Riverside Telephone Company's line out of Lapeer,—a mile and a half long. The construction is poor. I got my information from the secretary of the line.

On some of the lines out of Hastings the construction was poor, and on others, good. The poles were three and four-inch tops, and stood pretty straight. The farmers say about three feet in the ground, but not well anchored.

There should be anchors on the turns. I went over this entire line. I say the construction was poor because in part, not anchored at the corners. The poles did not seem to be set deep enough. They were leaning over.

At Hastings I inspected the state road and East Irving and Hastings telephone lines. My instructions were on this trip to find out about the organization and condition of the line.

I had no particular list of lines to go over, but took a list of all the lines there, and these happened to be in a certain direction. There are twenty-four lines coming into Hastings, and I went over two. I knew nothing at all about the character of construction

before I went on to the lines, but just picked these lines and places because they were the most accessible.

M. A. PORTER recalled.

Direct examination by Mr. WYKES:

I have recently been on the roadway lines at Brooklyn and Munith. I went over the full length of the Munith and North Henrietta. It had sixteen subscribers, was a mutual proposition and the condition was good, it being rebuilt a year ago. There were two lines on one line of poles with thirty-five 'phones.

It was originally built six years ago. I also went over
108 the Munith and Bunkerhill; seventeen 'phones. The condition was poor, being very small poles and very badly built. It had been built five years. I also went over the state road line at Munith in part. It was a farmers' mutual roadway; both construction and maintenance very poor.

I also saw the Tompkins telephone line at Rives Junction, which is made up of farmers' mutuals or roadways, with something like 300 telephones. I went out on two lines, the condition of which were very poor, being small poles, much decayed and poorly built. Also the Horton, south of Jackson, a farmers' mutual roadway, going over about ten miles of line there. There were three pole lines on one road, all mutual companies coming into the same exchange.

The condition and maintenance was poor, the lines were ready to fall down, the wires badly kept up and rusted. Those lines were not picked out for me to see, I just drove out on a line, not knowing anything about it before I went. I was also on a line from Brooklyn to Napoleon. On this road there were three lines, one very good one, of the M. S. T.; the others were all farmers'.

I inquired why there was so many lines on one pole; they said there was no more stock to be sold on that line and if the other fellow wanted a line he could build it, and so they did. None of those lines did any switching of their own, they all ran into someone else's exchange.

Recross-examination by Mr. CAMPBELL:

The poles, Brooklyn to Napoleon, which were carrying those wires I estimated to be two inches at the top, and not to exceed four or five at the bottom. There were three different lines of poles on that highway. On the Tompkins there were three lines of poles coming in on one road.

109 There are quite a number of roadway lines coming in at that point, something like 300 'phones to the same exchange. The Tompkins was not assessed. There the roadway companies select one man who is a delegate from their company and that constitutes the Tompkins exchange. The exchange has officers.

The subscribers pay $1.50 to $2.50 a year for exchange service; this would make $750 a year. They might receive also commission on toll messages.

A lady runs the exchange, and the amount paid in goes to her for switching. Whenever necessary, they make an assessment on each member of 25 cents to 50 cents a year in addition for maintaining the switchboard. I only went over two lines there; they are all on the highway; they extend into a considerable section of the country and serve a considerable number of people.

By Mr. WYKES:

I mean that there are quite a number of roadways entering into the exchange, which are served. The individual lines would not be very large; the largest I found was eight miles, and the largest number of subscribers, twenty-five.

FRANK A. BELL, a witness for defendant.

Direct examination by Mr. LAW:

I am a miller, residing in Calhoun county, and connected with South Emmet Tel. Co. It is a social neighborhood organization—a short line out of the village. It is incorporated; connects with M. S. T. at Ceresco.

The stockholders built the line themselves; bought the poles from the farmers; the labor was contributed, except they hired a lineman to stretch the wires. The company own the telephones. The poles are tamarack and good; they average twenty feet in length and run five inches at the top. We used regular telephone wire.

There are nineteen members and twenty subscribers. There are three other small companies connected with that exchange, whose lines were put up in the same way. I have seen those lines a good many times; the majority of it within the last six months. Some of the companies own the telephones, others rent of M. S. T.

Our tamarack poles have been in the ground five years or a little longer, and are all still in good condition. We have good service, except ordinary storm troubles. I was recently elected president. We have one rented telephone; have no tolls.

The M. S. T. operates the switchboard at Ceresco. Our company has no revenue from toll service. We pay the M. S. T. for such service. The expense of maintenance is met by assessments and the company is not managed for profit. The organization of the other companies in that exchange is the same. They are all corporations. I think they are all maintained by assessment and are all farmers' mutuals.

Cross-examination by Mr. CAMPBELL:

At the beginning they put up the amount of the expense of the line. The company has a president, secretary and treasurer and keeps books of account which would show the cost of construction and maintenance.

They figured the labor at $1.50 a day. A team down there would be worth at that time $3 a day; the poles were worth 40 or 50 cents; there were thirty to the mile.

Our line is all on the highway. The tamarack poles which have been there five years are good and sound; the oaks have begun to give out. We calculate to keep the line in first-class shape.
111 The assessment has been $1.50 a year which was more than they needed so they reduced it.
For the exchange we pay the M. S. T. so much a year.

Redirect examination by Mr. LAW:

Our officers collect $3 or $4 for 'phones for the M. S. T.
The only revenue our company has is the assessment of $1 a year. In building the line a good many of the members got out together. Our company does not maintain any office or employ any men or clerks, except a repair man, who is one of the subscribers and paid for the time he puts in.
The other two lines spoken of are substantially the same as ours. On the three lines are about eighty-eight phones. This payment to the M. S. T. is for Marshall and Battle Creek service. In addition we pay their manager about the same amount for switching between ourselves. We rent one phone for $6 a year. Our company owns our phones. The North Marshall, one of these other companies, rent their phones and pay the M. S. T. $3 each; one is rented to an outsider because no demand among the members.

LEWIS BROWN, a witness for defendant.

Direct examination by Mr. LAW:

I am a farmer and reside in Oakland county and am connected with the South Rose Telephone Company. It is a band of fourteen farmers who built a line to connect with the Bell.
We connect with that line two miles south of Holly. Our line was built four years ago by the fourteen farmers, who furnished the poles, which were tamarack and oak, and we used fence wire. The poles and labor were donated and in the first instance each man donated $6.
112 When there is a break in the line everybody gets out and fixes it if it happens to be anywhere near them; we have no repair man and there is no maintenance expense. We rent our telephones of the M. S. T. at $7 per instrument per year. The secretary collects that charge and we have full connections with the Holly switchboard.
The line is not as good as when built. Three poles have been replaced by others, and especially the oaks are beginning to decay at the top of the ground. We have free connections with all Holly switchboards and pay for toll service. Our association is supposed to meet once a year. We have officers, but they are all figureheads, except the treasurer, who collects the rental of $7 for the M. S. T.
He receives no pay and the association employs no help. There are other lines of a similar character in that vicinity with which I am familiar. They are farmers' mutual companies, built on the same principle, and are comparatively the same length. I see them

every little while and they are constructed on the same principle as ours.

They use various poles,—oak and tamarack, and connect with Holly exchange, the same as we do.

Cross-examination by Mr. CAMPBELL:

Our line is built on the highway. There is another line on the same highway part of the way. The organization of that line is similar to ours. Our line has thirty poles to the mile, about six inches in diameter and twenty feet long.

If the line needed repairing in front of my house or elsewhere, I would do it if I had time. In building, no account was taken of the cost of poles or labor. The manager at Holly explained to us how to build it.

In addition to the $7 a year we pay a charge of $8 rental
113 for running on the trunk line. We strung the wire for four miles on their cross irons and pay $8 a mile. There are no other expenses. That $8 is assessed once a year and in addition we pay $1.75 each, four times a year for phones and service.

For toll service the secretary collects from the different phone users for the M. S. T. Our books show only the cost of the materials.

Redirect examination by Mr. LAW:

Poles of that character are worth in that part of the country 25 cents apiece. I do not know if any poles have sold at that figure.

GREGORY BURGER, a witness for defendant.

Direct examination by Mr. LAW:

I am a farmer in Berrien county; the farmers in our vicinity have telephone facilities through getting together and putting up a line. There are eight farmers on our line who bought the materials and had a "bee" and put it up. The line is one and a quarter miles long and has eight subscribers; its telephones are owned by the M. S. T. We pay that company $7 a year for each telephone. I collect it, being the president, treasurer and secretary.

Our company maintains no office and has no employés. If anything goes wrong I go and fix it and don't say anything. There are one or two farm lines in the vicinity constructed in the same way as ours and a couple of others they bought from the M. S. T. a year ago; I expect they all chipped in to pay for it.

On one of the other lines put up like ours there are twenty-one subscribers. They have two lines on one set of poles. The M. S. T. owns their telephones. We connect with its exchange at Galien,
and pay long distance tolls and $7 for rental. We have no
114 income that the M. S. T. does not get.

Cross-examination by Mr. CAMPBELL:

Our company is the Wedel Roadway, an association of eight men, organized and built a year ago in April. It took us about a day to put it up. We paid about 50 cents each for cedar poles, and put thirty-two to the mile.

We do no other business except that with the M. S. T. The line is in pretty good shape.

WILLIAM H. PEPPER, a witness for defendant.

Direct examination by Mr. LAW:

I am a farmer and reside in Rose township, Oakland county. Our telephone service is provided by a line which several of us farmers built. We started with five members and now have fourteen. The farmers got together all at the same time and built it. There are seven and a half miles, part on poles of the M. S. T., at a yearly rental of $2 per mile.

The poles are white oak and run from five to seven inches at the top; they are twenty feet long and worth at the outside, 50 cents each. We rent our telephones of the M. S. T. and pay it $7 per year each. I am president, secretary, treasurer and repair man. We have sold stock to three men along the line, and they are now subscribers. All the subscribers have stock in the company; there are no stockholders not subscribers. We connect with the Holly exchange. Our company has no revenue, except the $7 collected and paid to the M. S. T. The line has been built five years. There has been nothing to pay for maintenance yet. When there is a broken wire or something like that, anybody fixes it who happens to see it first.

We have no office or employés of any character. I know what the other lines of a similar character in our vicinity are, they are
115 the same thing as ours and were constructed by "bees" the same as ours. Before we constructed our line the M. S. T. manager told us how to do it.

The only thing we pay the manager of that exchange is the regular rent of $7 for the M. S. T., which gets our entire revenue. Our company owns no exchange. The names of our members appear in the M. S. T. list of subscribers in its directory.

Cross-examination by Mr. CAMPBELL:

They appear in the alphabetical list only distinguished by the number.

I do not think our company is incorporated. The additional members who came in were told that if they wanted to go on the line they could do so for so many dollars. The company's name is the Rose Center Tel. Co. We are a voluntary association; have held no meetings and I get no pay for my services. At first we had five subscribers and now have fourteen. We have quit taking on new members.

There are two other similar lines near ours. Our company has a contract for the telephones with the M. S. T. If we get hung up and cannot make the repairs ourselves the M. S. T. manager at Holly will come out and make them. Under the contract he is not obliged to. If anything goes wrong we are supposed to take our telephone to the office to be repaired. He then repairs it or gives us another without charge.

L. B. HITTLE, a witness for defendant.

Direct examination by Mr. LAW:

I am a farmer residing at Clinton. We receive telephone service at the farm provided the same as testified to by these other farmers. They go ahead and build their lines to the corporation where the M. S. T. meets them. In our association are twelve mem-
116 bers. I am manager for the M. S. T. at Clinton; we have fifteen rural lines running in there. They are all constructed in about the same way and in length run from five to seven miles. On the fifteen lines there are about 160 telephones. They were constructed about this same way about eight years ago.

About nine years ago there were eleven or twelve phones on this switchboard. There was not money enough in it so I started out that winter and organized these companies myself. I was then working for the M. S. T. They were all voluntary associations of farmers. The construction is all of tamarack poles and common wire. The way I started out was—there is always a king bee farmer in every neighborhood; I found that fellow and got the farmers to come in and they made arrangements to build their line as best and as cheap as they could to get in touch with the M. S. T.

That company owns the telephones on these lines, and rents them for $2 or $3 a phone. There is no additional charge for switchboard service between the lines. It practically costs the farmer $7 to be connected with the M. S. T.; that all goes to that company. I am not employed by any of these lines in any capacity. I own a phone as a member of one of the companies on my farm. There are 298 phones connected with the exchange. None of the subscribers own their own phones. They are all voluntary associations.

None of those associations has any revenue except what goes to the M. S. T. The lines are not in very good shape. In the eight years since they were put up they are getting bad; some of them are in bad shape, being tamarack poles; the life of a tamarack pole is eight to ten years. In places the poles are falling down. They fix them up. If a pole is taken down they reset it. The sub-
117 scribers on these lines appear in the M. S. T. directory, some by number and some by name.

They are all put in in alphabetical order; they do not appear as a company at all, just simply as a phone number. None of these associations have any office or any employés, except some one of their own members who looks after the entire of one line. I think the association meets about once a year. The poles are worth about 50 cents each.

At the first meeting they figured out about the cost for the first year and assessed each other a certain amount to defray the cost of the line and the first year's rental to the M. S. T. When I first took up the construction of those lines there was a representative of the M. S. T. there at one or two meetings; after that I did the work myself. He outlined the method of organization and construction and what I should charge for the telephones and so on, then I went on and did the rest of the business for them.

I know several other farmers' lines in the vicinity of Clinton which do not connect with our switchboard. I maintain the office at Clinton for the M. S. T. That company owns the exchange.

Cross-examination by Mr. CAMPBELL:

When I first took up this work I was running a drug store in Clinton. The compensation I got from the telephone business was by commissions and the working up of the farmers' lines was for the purpose of increasing my compensation. The lines around Clinton were all built within two years from when I first took hold of them, they are all seven or eight years old. They are not incorporated, but each is a separate association and as such made a contract with the M. S. T.

These fifteen farmers' lines come in on different highways to Clinton. All the telephones are owned by the M. S. T. or the
118 Lenawee. I receive all of the money from these lines and turn it over to the M. S. T. This plan of development was originally my own idea for the purpose of increasing my revenue. All of those lines are operating and doing business.

The lines have been fairly kept up, but are not in good shape around Clinton. It is hurting the service. I have been trying to get them to straighten up. A little attention would put them in pretty good shape.

Redirect examination by Mr. LAW:

By a little attention, I mean, fixing over the lines by setting new poles and wires.

None of those associations operate a switchboard of their own and they have no facilities for furnishing telephone service. Five miles from there is what is known as the Lazelier switch, to accommodate farmers. One of our lines runs to this switch under an arrangement I made with this man to save the people building a line into Clinton. Lazelier owns the switch individually. It is a little farmers' concern to help out these other lines that come in; he does not make any price for the switching; they donate something to his wife for doing it. While they are there they do the switching, if they want to go away, they simply go.

Some lines out of that exchange are owned by M. S. T. They are along the same lines, but better built. On that line we charge so much a phone. The service is the same as accorded to subscribers on the other lines, though not at the same price. I would like to have the farmers build that kind of a line. If they will build it I will give them better service. If the Bell would build out to them and charge $12 or $15 a year they would tear their old poles and wires down and let them come after it.

WILLIAM ROBINSON a witness for defendant.

Direct examination by Mr. WYKES:

119 I live in Muskegon, and have been in the telephone business nearly twenty years; mostly in Muskegon in the capacity of manager. I had charge of the construction work there since

the organization of the company fourteen year- ago. I have been out on these rural lines lately—the lines running out of Plainwell. I observed three lines on the highway out of there.

I took them to be farmers' lines and got the impression they were voluntary associations, organized for mutual benefit of the farmers to get cheap telephone service. I examined the lines casually as I drove along the highway and had had sufficient experience in telephone business to say what character of line it was, whether, good, poor or indifferent.

The lines were built mostly of native timber, tamarack, oak or ash, or cherry; once in a while they were attached to a tree. The construction a practical telephone man would call very poor. The life of the poles I should think, was short, they would depreciate rapidly. The wire was of a character in which the depreciation would be rather rapid. After they had been up four or five years there would be a high depreciation in the wood construction. I should not think their life would exceed five or six years.

From information I gather there were three different companies on one set of poles, each claiming a wire and the other party owning the poles. That would reduce the cost of installation to the individual company. On the three lines there was in the neighborhood of twenty telephones. I drove over about four and a half miles of the line. The man I interviewed said the telephones belonged to the M. S. T. I should say that some of the lines could be built for in the neighborhood of $25 a mile; they would average two stations to the mile.

I was also over a short distance of telephone line at Scotts,
120 Berrien county. The construction was a good deal the same as that at Plainwell. The poles were all tamarack and there would be a rather rapid depreciation in that kind of a line. That was a mutual organization.

Cross-examination by Mr. CAMPBELL:

I was employed by the state to make these observations last Monday morning. I have been manager of the Citizens Tel. Co. at Muskegon fourteen years up to last September. I was sent out more to get witnesses than to make observations. My inspection was casual in going after the men. I cannot say that I was trying to get witnesses who would show up the lines as poorly as possible; that was not suggested to me. The test of a desirable witness was one that was familiar with the affairs of the company. The three rural lines out of Plainwell were all combined together on one pole line which I followed about three miles. I talked with Mr. Meister, a subscriber on one line. He said it was a mutual affair. They clubbed together to get a telephone.

He said that there were seven telephones on the line he was connected with; that they had officers and that he was the president. I think Mr. Powell has one of those lines on which there are ten telephones. Mr. Meister informed me that he did not own the telephones.

Mr. Meister's line had a contract with the M. S. T. I have constructed rural lines which were of a good class—better than these.

I judge these to be poor construction. Not such as I would like to construct. The wire on those lines would last possibly twenty years, while the life of a tamarack pole would not exceed five to six.

THOMAS TURNER, a witness for defendant.

Direct examination by Mr. WYKES:

121 I stay at Flushing and am employed by the M. S. T. in special roadway work assisting farmers in organizing companies. There are four roadways in operation over there. All connecting with the local exchange. They operate no exchanges of their own, but are mutual associations of farmers organized to get as cheap rental as possible.

They do not earn a cent of dividend. The line is built and maintained through assessment. They pay $2 a mile contact rental where they connect with the M. S. T. poles, and $7 rental and switching fees. They have no income at all that does not go into repairs or to the M. S. T. They maintain no offices and hire no one. The lines range from three and a half to eight miles long; on the four lines there are forty-two subscribers.

They are all listed alphabetically in the directory of the M. S. T. with the regular subscribers. They do not have a separate part of the directory for these roadway subscribers.

Three of these roadways I constructed myself. The farmers had a "bee" and all turned out and set the poles and hired a lineman to assist in stringing the wire. The cost of the material of the North Flushing was $330, excluding telephones, which belonged to the M. S. T. The cost of the West Flushing, five miles long, including lineman labor and everything but the telephones, was $88.75.

This does not include the farmers' labor. The Coldwater roadway of five miles length, including all labor and everything but the telephones, was $88.52. The line roadway of three and a half miles in length, not including labor was $49.

The oldest of these lines has been up two years; the newest since June. The Gazette comes to the local manager and is in the 122 office where the patrons can get them to read if they want to; it lies on the table so that they can read it when waiting for telephone calls.

Cross-examination by Mr. CAMPBELL:

The figures I give came from the companies' presidents in part. I could not tell how much was for the poles and how much labor or other items. For the West Flushing it includes $5 for labor and no account was taken for teaming. The poles which were twenty feet, cedar, cost 65 cents. The West Flushing was a regular association, not incorporated.

It had a president, secretary and treasurer. The contract was with the association. One man collected the rentals and paid them to the M. S. T. The $88.52 for the Coldwater line included everything. I have no personal knowledge about the labor. It was what I was told.

I constructed the town line myself. That was an organized association with seven telephones. I charged nothing for my labor, and

it didn't include the cost of hauling and setting the poles or the lineman, but simply the materials. On the North Flushing, which cost $330, there are two circuits and were originally twenty subscribers and now nineteen. That included only the material.

Recross-examination by Mr. WYKES:

The town line for three and a half miles used 16-foot poles. The rest of the distance they run on the M. S. T. poles. All of the other three lines are on the M. S. T. poles for a part of the way.

Recross-examination by Mr. CAMPBELL:

The M. S. T. charges a rental for these contacts. The low cost of the town line was because they did not have to buy poles and got their wire cheap. I should judge it would cost around $30
123 a mile to construct a line of thirty poles to the mile with poles at 50 cents each.

FRED ALLINGTON, a witness for defendant.

I reside in China township, St. Clair county. We have a rural telephone line called the China Roadway of eight or nine miles, with fourteen phones in use. It is a farmers' organization, the purpose being to have telephone service as cheap as we can get it, and we get it cheaper than we could from one of the regular companies. We built the line in farmers' style—got together and built it. There were sixteen people in all originally and they all turned in and helped. If anything goes wrong on the line the trustee is the man to look after it. We pay him for the time it takes him to repair. We rent our phones from the M. S. T. for $7 a year. We have no income besides this rental of $7 a year and the pay of the repair man. To get the latter we pass around the hat.

The line was paid for by dividing the cost pro rata. We give telephone service to no one besides ourselves. We have no exchange or switchboard, but are on the St. Clair exchange of the M. S. T. We couldn't give telephone service if we wanted to. Our names are in the directory of the M. S. T., furnished us by that company, being in the alphabetical list of the territory with which we connect.

I am secretary of the company. Our company maintains no office and has no clerks. We have a quarterly meeting, a sort of social affair, with something to eat, when we pay our dues; that is the way we do business. There are eighteen or twenty roadway lines out of St. Clair, all farmers' mutuals, and all connected with the M. S. T. exchange. None of them operate their own exchange or maintain an office, or hire clerks.

124 Their lines so far as I know, were built the same as ours, by assessment of the members. I know from what they told me, and from what I saw—that is current talk up there. The names of the people on the other roadways appear in our telephone book, issued by the M. S. T.

Cross-examination by Mr. CAMPBELL:

Our association has regular meetings. The contract was made by the company with the M. S. T.

The subscribers were all there when the agreement was made. It was signed by the officers. We pay quarterly dues for the rent of our telephones. We have not had any expenses, except about $3. The line has been constructed three years. A trustee is chosen by the company.

His salary is what he got of what the ladies brought to eat. Each individual gets his own batteries. I have helped on two or three of the other roadways; they were built the same way. I have no interest in them. It was merely as a neighbor. The poles on our lines were purchased; on the others some were purchased and some contributed.

Our poles are cedar, about thirty to the mile, and cost 88 cents at St. Clair, being purchased of the M. S. T. The hauling and other work, except the assistance of the lineman in stringing the wire was donated. At the time we constructed, teams were worth about $3 a day and labor $1.50.

Our line is nine miles long and we rent the poles of the M. S. T. for five miles. It took about a day and a half to haul the poles. It would have taken three and a half days to haul the poles for the entire line. Sixteen persons were at work about two and a half days, putting up the whole thing.

Some of the other lines running into St. Clair had their own poles throughout. I have seen a number of the other lines, I pass
125 them more or less. They are substantially the same character as ours, though one has tamarack poles. The construction appears to be good.

The names of the subscribers are all listed in the M. S. T. directory under the head of the St. Clair exchange. Our treasurer collects the rental and pays it over to the M. S. T. We have a president, secretary and treasurer.

D. W. Boss, a witness for defendant.

Direct examination by Mr. LAW:

I am a farmer; live at White Cloud and have telephone service through a mutual farmers' company build- their own line, each man paying his own share; it was a voluntary association; unincorporated and used cedar posts and fence wire. Two miles of the poles cost 20 cents apiece; the line is at present six and a quarter miles. There are eighteen phones owned by the Citizens company. We pay $5 per year per phone for service to other lines; our association does not operate an exchange or own the switchboard, but connects with the Citizens at White Cloud. There is no additional charge for the connection beyond the $5. We paid $15 per member to start with. It didn't take all that. We have made an assessment of 50 cents per member since.

The first cost was $12.45 per member for thirteen members, with five miles of line constructed. We maintain no office, but have three officers. We hire a member of the association for repairs when occasion demands and pay him for his time. The line has been constructed four years and is in fairly good condition.

We furnish service to one renter and pay the Citizens Co. for it, charging him $10 per year; the $5 to our company goes into repairs on the line and is the only revenue. The names of our members
126 appear in the directory, furnished us by the Citizens Co. in alphabetical order the same as the other subscribers.

Cross-examination by Mr. CAMPBELL:

The association's name is the White River Farm line; the officers are president, secretary and treasurer. The company makes a contract with the Citizens Co. in which there is nothing to prevent our renting telephones. We paid 20 cents for two miles of poles and for the remainder, 33 to 35 cents, set. The $12.45 per subscriber covers the entire expense including all labor.

The subscribers were hired to build it, we paid $1.50 for men and $3 for teams. The line is now in fair condition. It is not the policy of the company to rent phones to those not members; this was determined by a vote. It is a mutual farmers' line for our own benefit.

DUNCAN WHITE, a witness for defendant.

Direct examination by Mr. LAW:

I reside at Evart, Osceola county. The telephone service at my farm is by an association of farmers who constructed the line and hired the work done and collected from the members to pay for it.

We used cedar poles on our trunk line and tamarack on the side lines, they averaged about 30 cents. There are thirty-seven members and forty shares; three have two apiece.

The cost of the line was $14 per subscriber. The Citizens Co. owns the phones; we pay them $7 a year and they keep them in repair. They installed the first twenty-five or thirty phones; the additions we install; we have no switchboard, but connect with that of the Citizens at Evart; we have no revenue. At first we had five officers; now we have three.

We maintain no office. One of the subscribers does the repair work at 15 cents per hour. There are five or six lines in that
127 vicinity of the same character. We were the first of them and they patterned after us. The organization of these other lines is similar to ours; two I know were constructed by their members the same as ours. The names of our members appear in the directory of the Citizens Co., the same as the rest, with the addition of "farm line" in place of "residence" for the village.

Cross-examination by Mr. CAMPBELL:

The company is not incorporated. We issued stock certificates. None of the shares are held outside the subscribers; three have two shares each; our lines are thirteen miles long and run on several roads. For a mile out of Evart we run on the same poles with another company. The cost of that was included in my figures.

We went in together, put up the poles and each paid part. The side lines run from the main line to reach those on side roads, there being six different roads. Our contract was made by the officers with

the Citizens; we have a meeting once a year and elect officers; each subscriber pays the Citizens for his own phone.

The line is not in very good shape. The other lines into Evart rather gain on us on the corners and places like that, otherwise their lines are similar to ours, as is their organization. They all issue stock, but none were incorporated. One line claimed they got their cheaper. We hired everything, they did some by donation.

There are two and a half shares paid for at $10 each which dropped out. In 1896 cedar poles were selling for 30 cents apiece.

H. E. McComb, a witness for defendant.

Direct examination by Mr. Law:

I am a farmer, reside at Big Rapids in Mecosta county, and have telephone service furnished by the Colfax Tel. Co., a
128 farmers' mutual organization of ten members. The members donated the poles and built the line themselves using oak, cedar and ash for poles.

The M. S. T. owns the telephones, we pay them a rental of $7 a year and connect with their exchange at Big Rapids. The association operates no exchange, has no income and furnishes no telephone service, except to members; the line has been built three years. I paid 25 cents each for black ash poles twenty feet long, six-inch top.

We pay the M. S. T. for toll service and our officer collects the rental. The names of our members appear in alphabetical order in the M. S. T. directory. There are four other similar lines there, some of them seven or eight miles long. Their organization and construction is similar to ours; they are voluntary associations. They have some contact lines running over the M. S. T. poles part of the distance. They have the same arrangement with M. S. T. as to telephones that we have.

Cross-examination by Mr. Campbell:

Our company makes a contract with the M. S. T. and our officer collects the money and pays it over to the M. S. T.

We have annual meetings at which we elect officers. We are not designated in the directory as a roadway line. The designation is "farm residence," or "city residence," etc. There is a line number and number of rings, the names are all grouped under the Big Rapids exchange.

Redirect examination by Mr. Law:

The line is in ordinary condition and a few poles are giving way.

W. Wiltse, a witness for defendant.

Direct examination by Mr. Law:

129 I am a farmer, near Morley; my telephone service is from a voluntary, organized farmers' line with twenty-five members, constructed in 1907. We built the line ourselves with a day or two of assistance of a man from the Citizens Co.; we used tamarack

and black ash poles, twenty-five feet long, six inches at top, valued at 40 cents. We rent our telephones from the Citizens Co. at $6 per year.

The rent is collected by our officer and paid over to the Citizens Co.; our line is maintained by assessments; we have no other source of income; we connect with the Morley exchange of the Citizens Co. Our company's name is Ætna Tel. Co.; we have officers and trustees.

We maintain no office and have no employés; there are a dozen lines of similar character in that vicinity; some are about the same, and some are cheaper and some cost more. They are all farmers' organizations, except one line out of Morley, owned by the Citizens. On one line the farmers own their own phones.

On the other lines they rent their phones from the Citizens; we are in the Citizens directory under Morley exchange; it is furnished to their subscribers in Morley and on the farm lines and the names appear in alphabetical order; with nothing to indicate they are members of our company, except the numbers.

Cross-examination by Mr. CAMPBELL:

We are a voluntary association, twenty-five members, twenty-six phones, that being in the Morley store for convenience of members, without charge to the store. We levy an assessment to pay $6 rent.

We have no income outside of assessments and no shares. The association has a contract with the Citizens; the line is fair, but the poles are beginning to show decay. Each member contrib-
130 uted $4 in addition to the labor and poles.

The labor was about two days apiece for twenty-five people, nothing was paid for teams.

R. H. HITCHCOCK, a witness for defendant.

Direct examination by Mr. LAW:

I am a farmer at Scotts, Kalamazoo county; our telephone service is furnished by a farmers' association, the Hitchcock Roadway; we have nine members and are not incorporated. Our one officer is a president, we have no offices, employés or clerks. The line constructed in 1907, was built by the members, it is three and a quarter miles long, of tamarack poles thirty to the mile, which cost 25 cents. They are eighteen to twenty-two feet lengths, four-inch tops. We rent phones from the M. S. T. at $7, they keep them in repair and each member buys his own batteries. We have no income; connect with the Scotts exchange of M. S. T.; our members appear in telephone directory in alphabetical order, the same as the rest.

There is one similar line in the vicinity, four miles long, eleven members; the same character of organization as ours. They rent phones of M. S. T. and connect with its exchange.

Cross-examination by Mr. CAMPBELL:

Our association as such made a contract with M. S. T. After our line was built we divided the cost equally among the members. The poles cost 25 cents each in addition to cost of delivery. We

donated our time and teams; we take the instruments to the M. S. T. for repairs; the service and poles are fair.

131 FELIX MEISTER, a witness for defendant.

Direct examination by Mr. LAW:

I am a farmer at Alamo, Kalamazoo county. Our telephone service is furnished by an unincorporated farmers' mutual, known as Martin Roadway. The farmers constructed the line themselves, using black ash, oak and cherry poles which we furnished They have four-inch tops, are fifteen feet long. The line is four miles long with seven subscribers. The M. S. T. owns the phones; we connect with three exchanges and pay $7 a year for rent of phones; there is no income.

We assess the expense of maintenance upon the members. The members of our company appear in the directory of the M. S. T. in alphabetical order. There is one similar company in that vicinity—the Powell Roadway.

That line was organized and constructed the same as ours in 1908, our line had been built four years; the Powell Co. has nine subscribers who own their own telephones.

Cross-examination by Mr. CAMPBELL:

Our organization has officers and holds annual meetings and I, as officer, collect the rentals for the M. S. T. Our company as such has entered into a contract with M. S. T. We rent no telephones to outsiders.

F. G. BARBEE, a witness for defendant.

Direct examination by Mr. LAW:

I am a farmer at Cheshire township, Allegan county. Our telephone service is furnished by a mutual company of thirty-two members; twenty miles long, known as the Allegan Farmers' Tel. Co., and organized by myself and neighbors.

The line was constructed last spring and we are about to be incorporated, each member owns his own telephone. I paid
132 $11 for mine. It was built by the farmers themselves with the assistance of outside help; we rent no telephones; connect with our own switchboard.

We connect with a dozen or more other mutual companies, through different switchboards. They are all farmers' mutuals and voluntary associations, and own switchboards; we connect with the Citizens at Allegan.

These companies all have their separate switchboards and run from 30 to 175 members. Each one has an exchange of their own and connects with their next nearest one, and get exchange service amongst one another.

I am under the impression that all those furnished with telephone service on these lines are members of the associations. I think they own their own telephones without exception they get their funds to maintain their lines the same as we do, by assessment.

Cross-examination by Mr. CAMPBELL:

I think these companies are all incorporated, though I don't know. Most of them are older than our company.

The Gobleville and Bloomingdale companies are the largest and have between 150 and 175 phones each. Each subscriber is a member of the company.

Our company has officers and directors. The poles are cedar for which we paid 45 cents to 95 cents f. o. b. Allegan.

Our entire construction was paid for in cash at $1.50 a day and $3 for teams.

It is to be paid for by assessment; my neighbors and I built it and are reimbursing ourselves from the assessment. We first got a certain number to agree to pay their share. It has been in operation since May 12, 1910. We make immediate connection
133 with but one other roadway and through that with others.

There are a dozen or fifteen lines there in all that our line does not reach. Our line connects with the Citizens. We own the switchboard as does each of the other companies. We pay for the service over the line of these other companies with service over our own; it is a mutual exchange.

There is no charge for connection between the lines. Approximately we can reach a distance of twenty miles and cover the southern part of Allegan county and the northern part of Van Buren. The line is well constructed.

The switchboard cost $100, the line of about twenty odd miles long, cost $800. It is not all on one roadway, but runs in different directions to reach members. The furthest distance of a telephone from the switchboard is four miles. For five miles our line runs on the poles of the Citizen- Co.

Had we furnished the poles for that distance the line would have cost more. Each subscriber owns his own telephone and that is not included in the cost of the line. To this time we have assessed the members $12.50 each for construction and operation.

We pay the operator $3.50 a week and will meet that expense and the cost of maintenance by assessment. Our repairs are now taken care of by some one being good enough to do it.

These other lines having switchboards have operators. The highest amount paid to one is $7 a week and house rent. The other companies all provide for repairs and operating expenses by assessment.

The Bangor will be the largest company and have 200 phones. The Pullman Farmers' has 40; the Lacota 30; Grand Junction 75; Linton-Baker 75; Reedsville 25. We have no directory, but are preparing one.

134 We have an independent organization of these various lines, of which I am an officer. It is a voluntary organization and named the Mutual Exchange Telephone System. These lines are some of cedar and some of native timber, and mostly grounded lines.

There are other companies in this section—The Kibbie Tel. Co., and Cheshire Farmers', which come in competition with us.

Redirect examination by Mr. LAW:

The poles on our lines are 44-inch 20's to 6-25's, and the 4-inch 20's cost 49 and 70 cents f. o. b. Allegan. Our line was constructed to take on additional subscribers without extension. A considerable amount of these other lines was constructed of native timber.

The construction is not as good as ours. We only furnish service to our own members and the adjoining companies.

To become a member of our line they must pay $12.50, which includes operating expenses since May 12th, in addition to paying for their own phones.

Recross-examination by Mr. CAMPBELL:

The $10 apiece from thirty-two members brought in $320; the line cost over $800. The balance must be assessed on our members if we don't get additional members.

To make our line a metallic circuit would cost $5 or $6 a subscriber more. Our lines are all in the highway.

CHARLES MULNIX, a witness for defendant.

Direct examination by Mr. LAW:

I am postmaster at Cement City. I am the manager of the M. S. T. switchboard there. I switch for the farmers and get a small switching fee from them and a small commission for long distance work. Connecting with that switchboard are twelve lines—
135 eight or ten that run out among the farmers and three or four in town.

They are all associations among the farmers. I have been there since they first built those lines. Both in the town and the country they had a "bee" and did it themselves. The lines in the town are just a few residents on a particular wire, and they got together and built their own line.

I should say they have been building those lines for the last ten years. About eighty or eighty-five subscribers connect directly with my board. The Bell people have three rented phones in Cement City, the rest are all rural. I do the switching for those three phones and the three subscribers pay a rental to the M. S. T. In those rural lines are about forty or fifty miles of poles, at a rough guess.

The longest is eight to ten miles; they are maintained by the farmers, who go out and fix them themselves. I don't know where these lines could get any income. In building it they chipped in; they all own their own instruments and I give them connection with the M. S. T. The toll charges they pay me for the M. S. T.

I turn it over after keeping my commission. The farmers pay my switching fee by the year; two lines collect it themselves; on the others the individual members pay me. Our telephones are shown in the M. S. T. Jackson directory.

Cross-examination by Mr. CAMPBELL:

Each of the rural lines at Cement City is a separate organization; none of them are incorporated; I suppose each has officers, though I guess some lines haven't any.

They have no contract with the M. S. T. My arrangement for switching for the lines is made with them, not with the M.
136 S. T. I am paid by them by the year at $2.50 per phone, though there is a slight variation in charge on one or two lines.

We connect with Liberty. Through Liberty these subscribers can connect with Clark's Lake and go quite a ways to towns west. All the different companies together hire me. They simply understood it on the start. I have all I can do, I don't give them steady service; if I am busy with the mail or anything, they have to wait, and I charge them $2 a year.

The M. S. T. owns the switchboard; it would take thirty lines; they have twelve on it; I would not give much for it; it is an old second-hand board, moved there from Brooklyn.

THOMAS MCCORMICK recalled.

Direct examination by Mr. WYKES:

Within the week I have been out on telephone lines at Oxford and Holly. I went out on parts of four lines, seeing practically all of two. The four were mutual institutions. They were mostly contacts on M. S. T. poles. On Mr. Horton's line they had twelve poles of their own with seven miles of wire. The Mitchell line had one and a quarter miles of native poles; the rest were contacts. The M. S. T. owns the telephones, which were rented at $4 per year.

I was on the northwest line at Oxford, where they had seven miles of pole line and twenty-four wire; a part of theirs was contacts. I find it quite general with these smaller companies to make contacts with other company's poles; from this investigation and from what I made last fall. That would reduce the cost, and where there were a contact for a number of miles it would reduce the cost materially. The company out of Oxford was mutual with forty-five members.

They rent telephones from the M. S. T.; their construc-
137 tion was good. I didn't go out for the express purpose of seeing those lines, but just happened to run onto them.

Cross-examination by Mr. CAMPBELL:

The reason I went out was to get witnesses to testify to the character of the lines. I was not looking for any particular kind of a line. I didn't bring in a witness for this Oxford line because the man I saw was not in a position to know about the cost. It is not an incorporated company; it has officers; they claim to pay a $7 rental and take care of their maintenance as they can.

They have no switchboard; twelve miles of line, seven being their own, with good cedar poles and metallic circuit; I was told they paid $2 a mile for contacts. I saw all of the Mitchell line, which was the Five Points Tel. Co.

It is mutual and has officers. The Horton line was the Holly Center Tel. Co.; the other lines were the Rose Center and South Rose.

W. J. BERRY recalled.

Cross-examination by Mr. WYKES:

The M. S. T. publishes a gazette of which 2,000 copies are issued about once a month, for circulation among its employés.

The following is taken from No. 6 of Vol. 5 for January, 1910:

"Rural and Sub-License Plans.

The increasing demand for farm line service made it necessary for some one to devise a plan whereby this service could be given at a cost that would place the service within the reach of every farmer.

The plans which the Michigan State Telephone Company have tried out and perfected have met with the approval generally of the farmers, and with that knowledge in its possession, the com-
138 pany has given considerable time to the promotion of its plans; being the first operating and only company to present a feasible plan for giving the farmers a service that met practically all of his requirements.

The success attained under this plan has been gratifying in the extreme; over 43,000 sub-licenses are now receiving service under what is known as the rural and sub-license plans. In practically every farming community in the state we have these exchanges in operation and in many cases are operating successfully in competition with companies owning farm lines and charging the farmer a regular yearly rental.

Experience has taught us that a plan that will work successfully in one part of the state may not be suitable to another locality; therefore we have worked out our plans that they may meet the local conditions instead of trying to force the conditions to fit our plans.

Knowing that the first need of the farmer is a telephone service among his neighbors and the second that he may have connection with the exchange in his market town without additional expense, our company has placed the rental at such low price that the subscriber does not think it a hardship when asked to pay our toll rates for the occasional message he sends to our other exchanges.

The following is an outline of the plans by which the farmer can secure his telephone service at actual cost:

Our Rural Plan

contemplates the placing of a switchboard at the most convenient point in the rural district near our toll lines, so arranged that farmers will be able to build their own lines to connect with our wires at a terminal pole, which we erect near the switchboard, and receive service with all other subscribers connected with the same board, in addition to the general toll line service of the company. This plan can be started successfully with fifty subscribers and extended to 200 or 300 subscribers without difficulty. Our company furnishes the switchboard, instruments and operating service at a cost to each subscriber of seven dollars per year.

139 Our Roadway Plan

contemplates the leasing of telephones to a number of farmers who have built their line on one particular highway to the limits of a village, where our company has an exchange. An authorized individual of this roadway company can make a contract with us, enabling its members to receive our exchange and toll line service. The rate of rental for telephone and switching service would be seven dollars per year. We furnish a circuit from the village limits to the exchange switchboard without extra charge.

Our Sub-license Plan.

Where farmers own their own lines and equipment this company will contract to give them switching service at any of our village exchanges at an annual rental of four dollars per subscriber. The contract in this case to be made with one individual who is chosen to represent the subscribers on this line; the number not to be less than eight. Any telephone company operating a local exchange and desiring a connection with the toll system of the Michigan State Telephone Company can secure a contract with us that will be of mutual advantage.

The success of any plan depends entirely upon its merits, and some advantages of our rural propositions can be given as follows:

First. The subscribers in a certain community build and own their own lines.

Second. The ownership of investment of each subscriber is limited to the line on which he is connected and receives service.

Third. The construction of the line can be made largely according to the ideas of the individuals owning the same. This gives the individual an opportunity to take advantage of the natural resources of the community in which he lives so far as furnishing poles and other material.

Fourth. Under this plan the farmer is independent, owning his own line and equipment if desired, having in his power to regulate the service to a large extent, and having all of the benefits of a locally owned and controlled company, giving such service to each other as they desire or may require.

Fifth. A connection with a toll system extending to all parts of the state, having over 176,000 subscribers."

139*a* From the issue of the Gazette of January 1908 (p. 5.):

Mr. WYKES: From the number of the Gazette of January, 1908, I read the Article entitled "Rural Developement" on p. 5.

Mr. CAMPBELL: The same objection.

"Rural Developement.

In the State of Michigan there are 83 counties with a population in 1900 of 2,420,982. In these 83 counties there were in 1904, 189,161 farms averaging in size 92 acres each. 161,067 were owned by their occupants. About 40,000 farmers are connected with our

system. Let us say there are 20,000 more who have telephone service not connected with our system. What do you know about 128,161 farms not connected with any system?

Let us ask you to unravel the fabric of telephone development. Isn't the design built up on the warp of long distance toll lines? Isn't the local exchange service the body of the cloth which fills in the warp with the substance of toll business? Isn't it a poor fabric where the warp shows through. Cover it up! Weave it in full! Build up the small local exchanges so that the company will be obliged to warp in two or three more toll circuits to take care of the business. Don't let the lines you have show through bare just because you can't work up enough business to cover them up! How!

Remember Britain. You will have to fight and fight hard, perhaps, to conquer the undeveloped territory in your rural districts, but once you get it we have faith that we can hold it with the policy of square dealing. We plan this policy not for the purpose of aggrandizement, but for our mutual benefit with the patron we serve. In this particular case we refer to the farmer. We realize that he is, as he should be, the foundation of the community; the village is dependent almost for its very existence upon the farmer and therefore its intercommunication with him is vitally important. He is the source—the beginning: if you would succeed you must begin at the beginning. Get the farmers and you get the villages, get the villages and you get the county, get the counties and you get the state. But the farmer is the source. * * * The village must take the same telephone service as the farmer. The leading service in two or three villages determines the leading service in the county. The leading service in two or three adjacent counties might in time determine the leading service in the state. If the opposition should secure this lead it might weaken the strength of the state unity, and therefore impair to the cities the value of your entire connection. In any case it would mean the loss of a toll asset and an important strategic advantage.

The man on the spot is responsible for the conquest of the remote township, village and county. In accordance with the importance of this work the company will appreciate success. That he may succeed the company will back up the man with a policy of co-operation and square dealing; it will agree with any fair proposition the farmer may demand; it will in all cases, without discrimination, extend uniform privileges to apply on uniform or similar conditions; It will always be ready with the spirit of justice, liberality and consideration to adapt its treatment to apply on new or unforeseen conditions.

The representation of the colonies in the home government is a very important factor in securing the loyalty of the colonies to the Empire. This very principle of independent representation 139½ is no less fundamental in successful rural telephone development. The farmer must have an interest in the ownership and operation of his 'line;' first, as a matter of economy; secondly, of adaptation. Why should he pay the company an annual installment in rental on the construction and maintenance of a line which he could build and maintain much cheaper than the company. In

as much as it is not always necessary for him to buy poles, hire labor and defray in cash traveling and board expenses, why can't he build grade for grade cheaper than the company, and at the same time why isn't it an advantage for him to pay the bill all at once in labor or teaming rather than in cash? Even if the company could build its standard construction as cheaply as he could, why should he pay the necessarily high price for the company's standard construction when a slightly cheaper grade might be advisable. Owaing to local resources, mileage, and number of subscribers, this necessarily high cost of standard construction would often either prevent or seriously limit rural developement—and why isn't it better to allow the farmer to determine the grade of construction best adapted to local conditions? The problem of developement, then, is this: Educate the farmer to appreciate the particular advantage of telephone service to him; teach him the most economical way to secure this service; inspire him with the necessary initiative to carry on the construction.

This method, we believe, should cater to his natural independence. It is worthy of, and we believe it should enlist his appreciation. We consider the value of his co-operative interest with us in the telephone developement of his neighborhood and township as all important. It is the predominant idea in the policy of this company to merit the respect, friendship and co-operation of every patron that it serves.

We believe that we have the very best proposition of telephone service that can be offered to the farmer; if he can suggest a better one, we shall be ready to adopt it; therefore we hope to be of as much benefit to the farmer as the farmer is to us. There is certainly in the excellence of our toll-line connection sufficient inducement for him to connect with us in preference to all others, providing we can overcome any prejudice he may have acquired from the false prophet. In any case the liberality of our proposition should appeal to him and even if the dark teachings have been so well drilled in that reason must fail to unseat them, we do not ask him to commit himself irrevocably to us—all we ask is that he stay with us — long as we treat him fair and square; when we cannot do this, he is at liberty to sever his connections; when another company can offer him a more valuable connection than our own, or one as valuable for the same money, or less, he is still at liberty to sever his connections."

140 From the issue of the Gazette of February, 1908; (p. 5):

A Practical Plan.

"While a plan that is based upon theory and operated in accordance with theoretical ideas might conform to the demand of general conditions, still, owing to the fact that human foresight cannot provide for every exception, it must fail to meet the requirements of special cases. It is true that the rates, regulations, and classification of telephone service in our cities must of necessity be based upon the theoretical average of conditions; still the deviations from

these arbitrary standards in a city or large village are comparatively few. Therefore, a general theoretical plan really devised to fit the average practical standards must be the only just and economic means of dealing with a community made up of so many individual units. The rural situation is entirely different; there the unit is much more important in relation to the community—a very slight numerical variation in the units of population changes the whole aspect of the community in relation to telephone development. A numerical difference of only two or three families on six miles of country road can determine whether or not two subscribers to the mile for the six miles can be secured. If the theoretical plan calls for this number, and the necessary two or three are lacking, then we must refuse the ten farmers who want telephone service. Supposing there are four or five roads in the township in the same condition. Then under a theoretical plan we must fail to develop a community with an initial possibility of fifty subscribers. The theoretical plan of 'two to the mile' is based upon a perfectly sound mathematical calculation of dollars and cents; it is controlled by the sound and indisputable business axiom that you cannot afford to spend more than you are getting. To the man in the office who figured it out the plan is perfect—the trouble is with the community. To the man in the community who is denied the telephone service at a reasonable rate the plan is all wrong. There is a numerical difference of ten or twelve units of population that
141 stands between the community and the theoretical plan, and a potential difference of fifty stations on the wrong side of the telephone company's report. Multiply it by a few dozen townships and then look at the report. Next year look at the 'independent's' report and wonder where he gets them all.

Fortunately, the Michigan State Telephone Company never could afford a theoretical plan. Ordinarily even a theoretical plan is better than none, but this is an exception. Nature takes care of some things, and when she does, the job cannot be improved; still, we are free to admit that, in the telephone business, very little ought to be left to nature. Our rural plan just formed itself out of necessity to supply a great natural demand; its details were devised, supplemented and varied by the practical actualities of the conditions. In communities adjacent to large villages or cities, where the population per mile justified the extension of regular exchange lines at a fairly remunerative rate, and where the subscriber could secure the advantage of a large exchange subscription to satisfy him with this rate, the obvious thing to do was for the company to build the line. But necessarily most of the farming country is not so conveniently subserv-ent. The best farming country is generally located in sections removed from the larger cities. Instead of decreasing the usefulness of the service to the farmer, the isolation from the centers essentially increases its utility. Consequently the demand for the service came chiefly from communities impossible to serve by means of any theoretical or even practical plan of company construction. The management with sufficient foresight to realize the importance of these fifty or sixty potential subscriber communities, in order to extend to them the mutual ad-

vantage of service, was compelled to accept the only existing economic plan—if mathematics and the axioms of business prevented the company from extending construction, then there was nothing left to do but to encourage the farmer to build his own lines and allow him to connect with the service of the company at the fairest and most liberal terms consistent with business safety. That
142 invention which is really the offspring of necessity usually turns out to be a very healthy child and a strong man; we believe that our rural plan is no exception.

Nature teaches us that natural co-operation among the units of a community is a fine theoretical sentiment which fails to harmonize in practical demonstration, owing to the fact that many men have many minds, and since the mutual plan precludes an executive head they have no one to tell them upon what to agree. Consequently they do not agree upon anything, and disruption must occur. That is why our rural plan does not encourage the promotion of the 'mutual co-operative company' organization. The incorporation of a small company in a community involves many obvious disadvantages.

First, its entire policy is likely to be dictated by a small minority, who have had very little experience in the telephone business; each person wishing service must subscribe a certain stated equal amount, regardless of the advantages or disadvantages of his location; for the money he puts in he has no tangible property to show and a very uncertain 'interest' in the general pool. In the farmer, who is peculiarly independent temperamentally, this fact tends in time to lessen his personal interest in the enterprise. The company, which is usually founded upon an uncertain financial basis, finds itself unprepared to take care of extraordinary maintenance and depreciation, and the consequent deterioration of the service destroys the interest and confidence of the rural 'stockholders' in 'home owned telephone service.' In addition to this, improper provision is made to take care of ordinary maintenance and repair for the reason that the stockholders are unwilling to infringe upon their economical policy by paying some one an adequate definite sum to do this work properly. It is understood that they shall take care of their own line, but who shall do it and how much shall be done are two things that are never very definitely arranged. These facts apply both to a community mutual association and to the small community incorporated company.

There are of course, exceptions; many of these exceptions
142*a* are flourishing, soundly organized and well managed concerns, entirely successful financially, and with excellent prospects and provisions for continuing so. These exceptions are the result of particularly favorable local conditions, where the wealth and population of the community are sufficient to support a 'company.' Many of our sub-license companies are of this nature. The rural problem in such cases is solved with the answer plainly revealed. It must be remembered, however, that this is an exception, like the cases of our own successfully operated exchange farmers' lines. We have now returned in a circle to the remote and sparsely settled rural community.

Having noted the disadvantages of the mutual and incorporated organizations in such communities, we shall briefly sketch the elimination of these disadvantages in the plan which our company formulated through the inspiration of necessity. The farmer owns his line, like he owns his fence, in co-operation with his neighbor; he builds and pays for the necessary amount and puts it up according to the standard of his pride and the resources of his pocketbook; when he gets through it belongs to him. He can buy or rent a telephone, as he chooses, but the rental system is cheaper and better, so he usually rents. He buys his switching service at a flat rate per year, and of course, pays in addition for the toll service, he needs. An 'agent' is appointed, whose place of business is conveniently located in a commercial center of the community, as nearly as possible in the center of the population. He is chosen for his honesty, popularity and general acceptability to our company and the community."

142*b* From the issue of the Gazette of March, 1908:

"Too much importance cannot be urged for the necessity of appointing just the right man to act as 'agent,' upon him in a large measure will depend the ultimate success of the rural exchange. The potential strength and development of the rural exchange is never secured at the time of promotion and initial construction.

These exchanges usually begin with only a very few subscribers and with construction on only one or two roads. The full possibilities of the township are achieved after the majority of the farmers have seen the utility of the service actually demonstrated by their neighbors, and even then they will often need urgent solicitations on the part of someone 'to get them started.' That someone must be the agent. He must be live, popular, influential and persuasive; he must be ready and willing to devote time and interest to continual promotion in order to secure the results of successful development. Someone who knows the farmers and who has dealt with them for years is the man that can effectually say: 'Come, you fellows up there ought to get busy and build up that line; we want to be in touch with you.

"The ideal rural line should ultimately have three subscribers to each mile of construction. If this development is provided for, the ultimate investment to each subscriber becomes nominal. Of course in certain sparsely settled communities this maximum is practically impossible, yet such communities are usually settlements in a comparatively late settled district, consequently poles are much easier and more cheaply attainable, and a smaller size may be used, the saving in the cost of poles effects a compensating adjustment. In many such cases the farmer can cut the poles on his own land.

Briefly summing up, it has been attempted to show in this paper: First, that our plan is necessarily successful, because it is based upon the natural conditions of the rural territory it is designed to cover; secondly, that its development is the outcome of practical adaptation.

The evidence of its success, however, is not merely theoretical. We have the figures to show. Our first rural exchange was established April 10, 1903, with twenty-six subscribers. The first year we secured 451 subscribers. The second year we doubled the number. The third year we added 860. January 1, 1907, we had 2,655, and a year later, or January 1st, last, we had 3,538 subscribers in the State of Michigan connected on this rural exchange plan."

142c "The thoroughness of the developement in typical communities under this plan is evidence in the fact that we have ten of these exchanges with over 100 subscribers each and fourteen more with over 75 subscribers each. In five exchanges we have secured developements as follows: Highland 223; Prairieville, 205; Ortonville, 180; Hickory Corners, 140, and Freeland, 143. This is practically a development of about 25 per cent—that is, one-quarter of the entire population is represented by a station, or one telephone to every four people. This means a telephone for every family, counting four to the family.

Since its inception no radical changes have been made in the general plan; in fact, with the exception of certain adaptations to fit certain local conditions, no changes of any kind have been made: The rural exchange subscribers of five years ago enjoy uniform privileges with the rural subscribers of today, and vice versa.

The object of this paper is to set before the employés of the company, whose duty it is to promote our developement, the logical reasonableness of the rural exchange plan and to urge them to apply it with untiring perseverance to develop the sparsely-settled rural district. We want the subscribers of our system to be able to reach every remote corner of this state with a Michigan State Telephone; we want every farmer, regardless of his distance from civilization, to be instantly in touch with every town, village hamlet and city in this State—both peninsulas, and we want him to thank the Michigan State Telephone Company for that vitally important privilege. Today we have 3,500 subscribers connected on this plan. March 31st, 1909, let us make it a round 7,000!"

From a letter in the same issue appeared the following:

"Our line cost us $200 for twenty subscribers, which also paid a quarter's rental."

In the issue of June, 1909, appears an article upon the subject of construction as done by roadway companies.

In part it is as follows:

143 Mr. WYKES: From the issue of June 1909, the article "Construction as done by Roadway companies" on page 8.

"Construction as Done by Roadway Companies.

By W. A. James,
District Manager, Mt. Clemens, Mich.

"The construction of Roadway Companies' lines by the farmer is far easier than may at first be imagined. If proper instruction is given them before and after their work is started, they will expe-

rience but very little difficulty in constructing their lines. At first they are skeptical as to whether or not they can do the work, but as soon as they have started and they find it is not so difficult as they first thought, they become enthusiastic and will not stop working until they receive connection with the local exchange.

As soon as the Roadway Company is organized (this being explained in the March issue of the Gazette) the president of the Company, with the approval of the subscribers, appoints a committee of three members to stake out the line. The object of staking out the line this early is to ascertain as to the exact number and length of poles needed.

They also negotiate the purchase of poles (all other material most generally being bought from this Company), also supervising the construction of their lines.

The committee, after securing prices on the poles from the different firms, meet, and, deciding on the firm they wish to purchase from, instruct their chairman to place their order.

Upon the committee being notified of the arrival of the poles at the nearest railway station, they advise the subscribers of the fact, appointing a day to haul them to their territory; wire and other material being handled in the same manner.

After the material is distributed the committee advise a portion of the members comprising the company to report for work on a certain day, this being arranged so that *if* for any reason any member asked to work cannot come he is allowed to hire a man in his place or work his time out later on during the construction.

Just to illustrate how readily the farmers take hold of telephone construction the following facts may be mentioned: 640 poles on two cars arrived at the St. Clair station to be divided among six Roadway Companies connecting with this Exchange. The next morning 42 teams arrived at the station to haul these poles to the different routes. These six companies represent a total of 87 subscribers, 73 of which took instruments at the completion of the line, the other fourteen to take them later on.

The construction of the lines of these six companies being started at about the same time, a considerable amount of freight charges on the poles was thus saved by the companies ordering their poles shipped together.

In organizing the first Roadway Company in the territory one of the first points that is always brought up for discussion is the argument that they think they will not be able to construct their lines without obtaining experienced help; thus it is necessary to explain to the members the details of construction and instrument installation.

Explain to them how first to stake out their line so that they will have as few swings and corners in it as possible; next the proper depth of the holes and how to dig them; then how to line up a pole so that the crooks in the pole will be equalized and not show in a line; the proper roofing of a pole and the depth of the gain if
143*a* a cross arms is to be used, the proper way to place the cross arms before the pole is raised, being sure they understand putting the cross arms on the face of the poles; next how to raise the

poles and to line them up, facing two towards each other and the next two with the backs towards each other, giving a rake to the corner pole, and the necessity of firmly tamping all poles in.

It might be mentioned that the digging, gaining and throwing in of the poles, and tamping, are under the direct supervision of the committee of three, each committee man taking charge of the separate parts of the work.

Now comes the most important part of their work, viz., guying the corners. This is easily done by using such patented anchors as the Miller anchor or any other suitable anchor, and by using a small messenger or twisted No. 9 iron for the guy wires. Where there is but one circuit to string a twostrand No. 9 guy, if the anchor is a reasonable distance from the butt of the pole that is all that is necessary.

Next comes a most important, work, trimming of the trees and it might be mentioned here that where this — a hard task for this company on account of getting the consent of the farmers to cut the trees, yet the Roadway Companies find it perfectly easy, as most of the trees are owned by members of their own company and consent is readily given; and those that are not owned by members are easily trimmed by getting the ready consent of their neighbor thus obliterating one of this company's most disagreeable tasks.

Now comes stringing the wire. A team and wagon is brought to the local telephone office and two pay-out reel circles mounted on a plank is placed on the rear of the wagon, a set of slack blocks is furnished, and sometimes a pair of climbers is loaned to the company, but not often asked for as the Company usually prefer owning their own small tools, most generally purchasing such tools as pliers and connectors from their local hardware merchant.

Instructions are given them as to the method of stringing and tying in wires, and lastly of running their drops and installing their instruments."

144 "And to illustrate how readily the farmer learns to do this work, a few facts taken from the construction of the St. Clair Roadway Company's lines might be interesting.

The first company, organized at this exchange dug thirty-two holes and set and tamped in thirty-two 25-foot, 5-inch top poles, doing the work in five hours with four men. The same company placed on this company's poles (they renting contacts) 216 brackets, strung and tied in three metallic miles of No. 14 iron wire in one day, six men doing the work.

This line has been in service approximately two years; the poles are standing as straight, the corner poles holding as well, and the wires as tight as the day they were constructed.

Another company at this exchange dug thirty holes, set and tamped in thirty 25-foot, 5-inch top poles, doing the work in four hours and using five men. This same company placed the brackets, strung and tied in three metallic miles of No. 14 iron wire in one day with five men."

"As to running the drops and installing the No. 60 protectors and telephones, the same committee has charge of this work as well as the construction, and so far the farmers have experienced no trouble whatever, but on the contrary have met with unlimited success, they

being aided by having a little sketch drawn up by the Manager for their use while installing, as well as receiving instructions from him at the local exchange.

Thus it has been proved that the farmer can construct rural lines more economically and just as substantially as this company, and in testimonial thereto I conclude with a letter addressed to me by one of the officers of the St. Clair Roadway Company."

144*a* Mr. WYKES: From the number of April, 1909, the article on page 5, entitled Rural Problems.

"Rural Problems.

By F. E. Bowers, Manager Clare Exchange.

The problem of a satisfactory rural telephone service is one of the most vital of all questions confronting us today, especially to us of the smaller exchanges.

The impossibility of securing farm business to any extent under our present rate of $18 per year, is very evident; yet it has been proven by this company that every farm telephone from which we are receiving $12 per year rental, we are maintaining at a cost of $21. On the other hand, it is necessary, to secure this farm business in order that we may hold our subscribers in town.

It is the opinion of the writer that all farm lines in the smaller exchanges should be owned and operated by the farmer, under our roadway plan, as outlined in the circular letter from the general office dated May 1st 1905. It drafts out a plan wherein the farmer, by expending a small amount of money and a reasonable amount of labor, may secure and become property owner of a telephone service at the actual cost.

This feature greatly appeals to him, as his labor is not reckoned on a cash basis, inasmuch as he can do the work of construction at a season of the year when his time is not so valuable. It also gives each and every man an equal chance in securing his service on a pro rata basis. For instance: One man living a mile off the main road does not have to pay more than the man living directly on the route. It is of mutual benefit to both, and they share equally in the construction and maintenance.

If the value of the telephone is based on the amount of service received, then it becomes an incentive for every prospective subscriber to join his influence with yours to secure other subscribers. The farmer does not construct the line for the earnings he gets out of it, but for the convenience of being able to communicate with his entire neighborhood.

I think it is conceded by most telephone men that from 75 to 90 per cent of farm line maintenance is in the transportation—getting out to the seat of the trouble; and at least 75 per cent of the trouble is found in the instrument. Under our roadway plan, when the instrument gets out of order, this company will repair same providing the farmer brings it to our office. This means the saving of livery

hire, or about 90 per cent of the cost of repair cases where the instrument is involved.

The farmer has the means of transportation in his own stable; and, as in most cases he would figure on making the trip to town on an average of once per week the year around, this provision greatly appeals to him over the straight rental plan, where he knows the livery hire must in the end come out of his own pocket.

Nearly all cases of line trouble can be adjusted and repaired by the farmer, who is on the ground.

I believe the time is coming when all farm telephone lines will be owned by the farmer, and I believe that we ought to work with this end in view. I have had some little experience in promoting and organizing roadway companies, and would say that I believe it wise to avoid all public meetings as much as possible. In these meetings arise discussions on different points of the telephone business, which do not interest the farmer, and it also invites opposition. Proceed to make a house-to-house canvass; show each individual approximately what it will cost to build such a line, emphasizing the fact that he secures everything at first cost, and results will be forthcoming.

145 Some five years ago this company built a farm line about ten miles long on a rental plan. At the time it was completed we had twelve subscribers connected; today we are maintaining this line with three subscribers. I am glad to say, however, that we are negotiating the sale of this line to connect some fifteen subscribers under our roadway plan.

At the present writing we have three roadway companies connected, with a total of forty-two subscribers, two ready to be connected with nineteen subscribers; and possibly two more with twenty-four, making a total of eighty-five subscribers we hope to have in the near future.

In our smaller exchanges, where we have opposition, when the time comes for the people to do away with the dual system, then we will appreciate the importance of the roadway plan."

In fixing the price of $20 or $30 a station, I considered the contacts with other companies' poles in this manner: that the amount they paid in rental would pay a certain investment on a certain amount of property and they really had it invested or were paying interest on that investment. I proceeded on the theory that that represented so much in the line.

I took into consideration the contacts, also in this way; in my judgment, the value of the roadway lines, properly constructed, would amount to considerable more than the price I set. I considered that in many cases they had the benefit of our poles and that also many of the older lines were in bad shape. I considered the contacts to a certain extent because I knew it existed, but it does not exist to the extent that it has been attempted to be proven here. I made no figures to eliminate them by mathematical computation; I based my testimony on long experience and selling material to roadway companies and the cost of construction of lines by our own company. I took care of that item and the item of depreciation by putting on what I considered a low valuation. I didn't attempt

to figure any percentage of depreciation. There is a marked depreciation in some character of lines. I believe my testimony refers to about the present value, in view of the fact that most of our roadway lines have been constructed in the last three or four years. Without detailed examination it would be hard to obtain the value except as based on the cost. The whole matter is simply
146 a question of judgment and experience.

Where the farmers' lines occupy our poles the depreciation would be very low because it would only be on the wires. In that case the cost would be materially reduced, except where you count for the payment of rental and charge that up as percentage on a certain investment. If there is a contact on our poles the poles are already included in our assessment. We paid a tax on whatever value we have, and account to the state for all our property.

Our list of property in the hands of other companies does not include poles on which they have contacts. I only attempted to show our property leased in the shape of instruments and didn't attempt to include plants leased to other companies. I couldn't tell the ratio of depreciation on any of the lines covered by my testimony. The majority of lines on our roadway list have not been constructed over three or four years.

The only ones which have been in seven or eight years are the Clinton lines. The testimony I gave of value referred to all the exempted companies. I would not attempt to give you the ratio of their depreciation. It would hardly be 75 per cent, though I don't know of my own knowledge. I didn't consider the amount of depreciation as a part of my testimony.

I think I made my figures sufficiently low to cover depreciation. In the Cement City proposition I included the telephones at Liberty, making about 200 telephones. They own their own telephones. I have never been on any of those lines, and I don't know how long they have been built, the character of the construction or any of the details, and have no reports in my office showing the character of construction.
147 I said that I knew of enough good lines constructed at a cost of $20 to $30 to make my judgment an average.

"Q. Then you have taken up slack on two or three different things: Your figures are sufficiently low to cover contact rentals, that you didn't get any specific figures about, they are sufficiently low to cover depreciation, that you didn't know anything about, and they are sufficiently low to cover properties that you had never seen and had no figures with regard to; that was your idea, was it?

A. Well, my experience has been of sufficient—or it has covered a sufficient time to teach me that it would be impossible to operate a telephone line over construction unless it was of a certain character; it would have to have in the first place poles, and in the second place they would have to have wires, and the third place they would have to have some means of attaching those wires to the poles, and then those wires would have to be insulated to a certain degree in order to become fit for commercial use, and I knew that in order to accomplish that result, in order to give telephone service that you would have to have a certain amount of construction of that kind.

Q. So your testimony as to values was based, where you didn't know about the property, on the reasonable probabilities of the situation?

A. I have seen some very poor construction, and probably about as poor as could be in order to operate, and I would have to assume that very few of these other properties that I haven't seen could be much worse than those.

Q. You could still operate the line up to the point of some of the poles falling down, as long as they hadn't actually fallen down?

A. A pole here and there probably would make but very little difference, a number of poles coming down in rotation would probably have a very poor effect on the service.

Q. But up to the point where they actually went down, the wire would still give pretty good service, wouldn't it, as long as they stood up?

A. As long as the wires were clear, yes. Oh, yes.

Q. And so it is not a very close figure, is it, that doesn't take into consideration a knowledge of the specific properties and their condition?

148 A. I don't believe that I attempted in any part of my evidence to say that I thought that was a close figure, I said in my judgment that that figure would be about right, or those figures, and they may vary two dollars a station, or so, or three dollars some cases, and they may run higher.

Q. You don't know about that?

A. No, sir.

Q. You don't know which side of the mark they would come?

A. No, nor I don't think any one else does.

Q. And you don't know how far each side of the mark they would come?

A. No.

Q. But after looking over the whole situation and fixing $20 and making up your mind that some of them would be below and some of them would be above, you thought $20 a pretty fair average?

A. That is a pretty fair statement, I think, yes, sir.

Q. Were you ever on any of the lines over at the Brooklyn subway?

A. No, sir."

I was once on five or six miles of the line between Brooklyn and Napoleon. Have seen those in the village at Munith, but not the country lines.

I don't know the ratio of depreciation, whether it is 10 or 60 per cent. A depreciation of 60 per cent would make a line very poor, indeed. It might be used if the weather conditions were right. I have never been on the Meade Tel. Co.'s line, though I have knowledge of the construction through their inquiry for prices. I think their line will run considerably over the price I set. From personal knowledge I don't know whether they would or not.

I am quite sure they bought some of the material from us. I think they bought the poles; from what they bought I believe the line would run more than the price set in my figures. I don't

think I gave any thought of a particular percentage of depreciation.

149 The lines were mostly constructed in the past three or four years, many being constructed in good shape and the low price I stated on those would offset the poorer lines. I would not say that was a surmise, I based it on my experience in the business, not from any inspection of the particular thing I was attempting to value, except what my experience with similar things leads me to believe, the conditions would probably be. I didn't attempt to say that, hard and fast, the line would cost so much.

I don't know whether the actual facts at Cement City or the Brooklyn Switchboard would bear out my figures; at the same time it would cost a certain amount to get telephone service by use of wires, poles, telephones, etc., and it would be a pretty poor line that you could construct for less than $30 a station. I don't think the larger companies would put in double that amount if they could build for less. I don't know what the life of a good line would be. It is difficult to say what the actual value of those things would be, and difficult for a man in my position to say what the ratio of depreciation would be. A new line may last but a short time in this state.

CRESCENT A. PARKER recalled:

I have received nine additional supplemental reports. They all answer being organized, not for profit as follows:

Name.	Location.	Organized for profit.
Broomfield Telephone Co.	Millbrook	No.
Etchell & Mason Telephone Co. #2	Leslie	No.
Henry F. James	Detroit	No. Only used for summer season. Not incorporated.
Porterville, Onondago Tel. Co.	Leslie	No.
Rives & Leslie Tel. Co.	Rives Junction	No. If organized for profit, is a dismal failure.
Sherman Telephone Co. c/o R. M. Curtis, Sec.	Scottville	No.
South Rutland Centre Tel. Co.	Hastings	No.
Van Tilburg Telephone Co.	Galien	No.

150 The Redmond Township has reported—I found that the three roadways on Mr. Berry's list, taxed last year, will not be taxed this.

I would not say that I did not have the companies set forth on the lists of complainants' witnesses, but apparently not on ours;

I might have them under some other name. The search I made to discover all the telephone companies was as thorough as it could be. We applied to all the operating companies for a list of the various lines having direct wire connection with them applying to Messrs. Tarte, Berry and Melchers for their lists; in addition, we took a list of all the incorporated companies and a list of those which had been paying specific taxes; we exhausted every source that we knew how to reach.

There are companies on Mr. Melcher's list, whose names are entirely unfamiliar to me. I have never found the names of those companies upon those lists. He furnished us a list for 1909-10, supposed to contain the names of all his connecting companies. On a list now furnished there were 53 companies we could not find comparing with his list of a year ago. Some of the companies on the list in the testimony were not on the list he furnished this year, about June 1st.

It is possible that I have the greater portion of them under some other name. I have not made any examination to *to* tell. There is N. H. Blake; I believe we have that under the Shiawassee Mutual. In the list of lines on which Mr. Melcher placed values I found practically all the names on my list.

The Berrien County Tel. Co. reported for 1909:

"The company on or before June 30, 1909, had no exchanges or telephones in operation at any place, and therefore had no income. The fact is they have built an exchange since that time which was put in operation about October 1st."

The Carr Telephone Co. for 1909, reported: "Just a little farmers' neighborhood exchange, commenced operation February 15, 1909." Miles of wire, 10;

151

East Saugatuck Tel. Co. for 1909, reported: "Up to June 30, 1909, the company had fifty-five subscribers, all of whom own their own telephones." Miles of line, 31; miles of wire, 43.

Kalamazoo Home Tel. Co. for 1909, reported: "We have only a small exchange and a few special subscribers; we are just building the plant, have less than $250 invested so far."

Loxley Tel. Co., miles of wire, 18.

Mason and Okemos, 1909, report states: "Farmers' mutual concern between Mason and Okemos." Miles of line 20; miles of wire 45. The report for 1910, states: "This is a farmers' organization, covering a territory extending south from Okemos to Mason, with forty stockholders, and each has a phone." In addition, there are twenty-six rented ones.

A. E. Niedermeier: "The receipts for 1909, including toll receipts of other companies, were $522. Miles of line owned. "Three miles old line not in use;"; miles of wire owned "About 1 in use."

North Western Tel. Co. Report for 1910 states: "We are a small farmers' telephone company."

Onekama Tel. Co. The report for 1910, stated: "This is a farmers' telephone company, owned by R. F. Wendell, and what profit there is consists of money." Number of subscribers, 13; miles of line, 7.

Port Sheldon and Lake Shore Tel. Co. Miles of wire, 5.

State Road Tel. Co. Goodells. The 1909 report, states: "This company consists of seven farmers, and we have put in this line for own use. The 1910 report shows a part of the line leased from others."

South Bend Home Tel. Co., from the 1909 report:

"This company has twenty-six miles of pole lines in Michigan, and leases two miles * * * they have three toll stations in Michigan and no exchanges." The property will be taxed for 1910.

152 North Western Ohio Tel. Co. Report for June 30, 1909: "One pair of iron wires from Ohio line to Adrian. No poles and the wire has been up twelve years, and practically no earnings. The Michigan business does not amount to $25 a year."

W. L. Kinney reported for 1909: "This property is not now owned by me. It was not operated at all some time previous to my disposal of it."

Lake Ann and Oviatt Tel. Co. From letter 1909:

"Previous to the 1st of June, 1909, we were a rural proposition of the Bell Telephone Co., and paid them $7 per year for rent of Phone, and switching service on fifty phones, so you can see our company had no income whatever at June 1, 1909." This company will be taxed for 1910.

Farmers' Mutual of Chapin, in report for 1909: "Said company is a mutual, pays officers no salary; labor done by stockholders without pay; each subscriber owns his own instrument; expenses paid by monthly assessment. The lines were put in working order May 2, 1909."

Riga Farmers' Tel. Co. reported for 1909: "Each member pays $3 per annum central dues. The work of erecting line is donated by each member where line is erected. The member on each line owns his own telephone."

From report for 1910: "This corporation is operated for mutual convenience and not for profit; each member owns his own phone. $10 stock pays for erection of line."

Farmers' Independent of Deckerville, for 1909, reported: "A farmers' telephone company of which I am secretary, consists of sixty stockholders, each having a share of $25 and have
153 about forty miles of line. We hire our telephones from the Deckerville Tel. Co., and pay them $6 per year for use of phone and switching service.

Holloway Tel. Co. This company is evidently mutual, as its receipts from the sale of memberships indicate. Its income for 1910 was $648.

Portland Tel. Co. This company was evidently new in 1909, or shortly before, as is indicated by their expenses and the fact that they had no receipts. The receipts were sufficient to make it taxable for 1910.

Smith & Laird, for 1909, reported: "This line is about four miles; of the cheapest construction possible and is used for our private use only from our cottages to Brutus, Michigan." From report for 1910: "There is no such company as Smith & Laird. We have had

a private telephone line to Brutus, which we have abandoned as far as we are concerned."

Algansee Central Tel. Co. for 1910, reported: "This company was organized as a sort of farmers' mutual concern." The receipts for 1910 were $570.

The following will be taxed this year:
A. E. Niedermeier.
North Eastern Tel. Co.
South Bend Home Tel. Co.
Lake Ann & Oviatt Tel. Co.
Farmers' Independent Tel. Co.
Holloway Tel. Co.
Portland Tel. Co.
Allagansee Central Tel. Co.
East Saugatuck Tel. Co.

154 Cross-examination by Mr. CAMPBELL:

None of the companies mentioned were taxed last year; their receipts this year exceeded $500. Practically all my information comes from the reports. There are some mutual companies in the list. I do not mean to say that Mr. Melchers has withheld any information from me. I mean that he included some in the list here that he did not give me.

I have no reason to think that either he, Mr. Tarte or Mr. Berry have not honestly given me such assistance as they could.

Last year W. L. Kinney of Dighton, reported under the name of Winterfield Rural as not for profit.

The Redmond Township roadway was taxed last year. Will not be taxed this year, because its gross receipts did not reach $500. This is one of Mr. Berry's roadways.

Mr. WYKES: I wish to call on Mr. Campbell to furnish us a more complete and definite description of these purported telephone institutions that we cannot find.

P. E. HURSON, a witness for complainant.

Direct examination by Mr. CAMPBELL:

I have lived in Detroit three years; am superintendent of construction of M. S. T., and have been employed nearly three years on constructing outside telephone plants in Michigan. From this experience I feel qualified to testify as to the cost of construction and value of telephone lines. I have recently examined the telephone lines of different companies to ascertain their cost or value, being the People's Mutual of Le Roy and Whiteoak at Webberville.

It is a mutual, incorporated, company having 168 subscribers, who own their own telephone sets. There are in addition about thirty subscribers on a rental basis, where the company owns
155 the telephones. The company operates about fourteen lines extending into the country, the balance being local lines in the village.

(Objection based on the fact that the company was assessed and not a complainant.)

The construction is partly of cedar, three to four-inch tops, and partly tamarack and oak, three to five-inch tops. Some of the cedars are in fair condition. The large majority of the poles are oak and tamarack, in poor condition, insulators missing and broken and pins broken; there were a number of leaning poles. I should say it was poorly constructed and poorly maintained.

(Objection, testimony not proper rebuttal.)

One subscriber stated he owns and maintains his own telephone and that the company maintains his wire and he is assessed for switching fees.

I also examined the Locke Mutual Tel. Co. at Bell Oak. It is incorporated, and 250 subscribers own and maintain their own instruments and the company owns thirty-five instruments that are on a rental basis. There are eighteen lines from that company's switchboard.

The line running southeast is in fair shape, constructed of cedar poles, four to six-inch tops. The laterals on this line have tamarack and oak poles, three inch tops, and are in bad condition; the wires and insulators are somewhat broken and badly in the trees. This line runs on the highway and connects with Bell Oak exchange. The west line for two and a half miles has cedar poles, five to six-inch tops, and is in fair condition. The balance of five and a half miles, has tamarack and oak poles, two to four-inch tops, and while not just as would be built by an experienced construction man, is good enough to answer the purpose. The other part of the line is of the same character of construction, except the poles are not in good condition.

156 On the north line one mile of the construction is cedar, four to five-inch tops, the balance is tamarack and oak. Generally speaking, the cedar construction is fair; all the balance of the exchange construction is in poor condition. There were twenty-six miles of telephone line operated by that company.

I examined the line of the Shiawassee Tel. Co. at Perry. It was an incorporated mutual with ninety-six members on assessment basis and 114 on rental basis, the former owning their own telephones, the latter being owned by the company. There are about ninety lines into that switchboard.

Almost the entire construction is ash and tamarack, with two to five-inch tops and eighteen to thirty feet height. Two-thirds of the poles were badly rotted and unsafe to climb, some of the poles being badly overloaded. It is a poor, cheap construction throughout, with grounded circuits.

I examined the line of the Dansville Tel. Co., a mutual, not incorporated, owned by E. J. Blakesley and wife. The company owns the poles, wires and switchboard in Dansville village. The sixty subscribers in the village are on a rental basis, the company owning the construction and sets. In the country, outside are thirty-six lines owned by the farmers—individuals, having 240 telephones. I was told these details by the owner of the exchange.

(Objection to the testimony as hearsay and not proper rebuttal, which is understood to stand to all subsequent testimony.)

The farmers' lines here were in fair condition. There was no particular difference between these and the other lines I examined, except that there were more cedar poles used on the others.

157 I examined the lines of the Rural Tel. Co. of Waterloo, at Stockbridge, an incorporated company of 220 members on assessment basis for switching and ninety on rental basis. There are twenty-five lines extending into the country on which the company own the lines and sets.

Construction was very poor, some cedar poles, but the majority tamarack and oak. The lines were all grounded and the insulators and brackets broken and showing indications of poor maintenance. In places on some of the lines, trees were used to support the wires. At one place I broke off two out of five poles tested, by pushing them over. Those poles were eighteen to thirty feet high and stood shallow in the ground.

At one place I tested two and found one set 26 and another 22 inches. The manager said he made a practice of setting his poles one and a half feet in the ground. The proper depth to set a 30-foot pole is five and a half feet. On the lines I examined the outside construction could be put up for a figure ranging from $40 to $50 a mile. Two subscribers to the mile would be a fair average. The instruments would be extra and an ordinary set would cost $14 or $15.

This does not include installation. That would cost $3.

Cross-examination by Mr. WYKES:

A farm line telephone requires a better class of signaling equipment than ordinarily used in cities.

I expect they are cheaper telephones than better classes use. I saw some of the instruments. I would not know just what the particular instrument I saw cost. My estimate given on construction, $40 to $50 per mile was on the basis of poles set in the ground one and a half feet. I have built telephone lines within a few miles of these localities, being our own rural lines.

158 I would not feel competent to answer whether where two poles out of five tested broke off, the depreciation would be above 50 per cent; they say they set those poles back into the ground. I would not say there would be a high depreciation on account of their being set so shallow. I am not prepared to say what the percentage of depreciation I found was.

I do not think the farmers could build these lines for less than $40 to $50 a mile if they included their labor, use of teams and materials. I estimate on the basis of $3.50 a day for teams, where the farmer uses his own. The labor would be from $12 to $18 a mile, at $1.50 a day. I estimate three men could set a pole in thirty minutes.

The companies I testified with regard to, except the Dansville company, operate their own exchanges; that company operates the exchange for the rural companies connecting with it. All of these companies operate exchanges and where there are rural roadways they operate the board for themselves and the mutuals.

I was out on the rural roadway lines. In some cases I found poor construction; it was on the lines extending into the country in all cases. The companies that I named were all taxed, I think. I did not go into the question whether the separate lines had organizations separate from the exchange; I do not know whether they did or not.

I found places where four or five different wires came in over the same road. I cannot say that each line represented a different roadway or whether for each wire they had a separate organization among the farmers. They may have had, but my judgment was, that the lines would be owned jointly by the number fed from it.

Redirect examination by Mr. CAMPBELL:

The lines belonged to the central company for each of the companies I testified about, except the Dansville lines.

159 Recross-examination by Mr. WYKES:

My recollection is that, except at Dansville, the lines were owned by one company. At Dansville the Dansville company owns the poles, lines and wires inside the corporate limits; the lines outside are owned and maintained by the farmers. This company operates the Dansville exchange and has sixty phones within the corporate limits.

A. W. FRANCIS, a witness for complainant.

Direct examination by Mr. CAMPBELL:

I have lived in Detroit six years; am, and have been for five years, construction foreman of the M. S. T., and have been engaged in telephone work fourteen years. Actual construction has been in my line, though not the cost of materials.

I recently examined some telephone companies to ascertain their condition; the Deerfield Farmers' Tel. Co., which is incorporated; operates at Deerfield; has an exchange at Petersburg, and operates farm lines principally. I drove over five different highways from two to four miles.

The lines were owned by the Deerfield Farmers' Tel. Co. The principal parts I drove over had 2 x 4 scantling fastened to fence posts; some of the lines had cedar or oak poles. The secretary of the company estimated one-third cedar, one-third oak and one-third fastended to fence posts.

In the two exchanges were approximately 400 farm line subscribers, some being in the village and some outside. They were maintained by assessment. They have a man who takes care of their trouble and the company is assessed to pay him.

160 I examined the lines of the North Adams Tel. Co., which is mutual; there were a number of companies there. The North Adams Tel. exchange owns the exchange in the village. The roadway lines there, running to a connection with the exchange were owned by independent associations of farmers. The pole lines were in poor condition, except one running south that had

been re-poled recently with tamarack poles. They were all grounded circuits.

The other lines on the east, west and north roads were in very poor condition, native poles and badly rotted.

I examined the Farmers' Mutual Tel. Co. at Litchfield. It was incorporated and the subscribers are assessed. There are about 220 subscribers, who own their own telephones and maintain their own lines.

The Fayette Rural Tel. Co. at Jonesville—unincorporated, with 250 farm line subscribers, had twelve lines, all grounded circuits. The construction was native poles with a few cedars. The farmers own the rural lines. The telephone company has a switchboard and operated the exchange for the lines running into it, the subscribers pay the switching charge.

Cross-examination by Mr. WYKES:

At Deerfield there were possibly fifty miles of pole line on the farmers' lines and approximately 400 subscribers. On all the lines the entire mileage would not be much over 75, if that.

Where there were five telephones to the mile it would cost less to purchase and install telephone equipment than where there were two. The line I found at Deerfield would cost from $35 to $40.

Out at Deerfield I drove over ten or twelve miles of line and found one company that owned the whole thing. At North Adams the situation was made up of a good many small roadways
161 and the same was true of the Fayette Rural at Jonesville. I found a good deal of very poor construction.

J. J. MCQUAID, a witness for complainant.

Direct examination by Mr. CAMPBELL:

I am district manager for the M. S. T. at Pontiac; and have been for four years. I have held several positions as construction superintendent and foreman and my experience extends about twenty years; I know about construction, maintenance and installation of equipment, being familiar with their cost.

I have recently examined lines with a view to giving an opinion as to their cost of construction. The Mayfield and Deerfield is a roadway out of Lapeer with seven miles of line in not very good condition, constructed of tamarack and oak poles, metallic circuit. The cost to construct a line of that character would be $40 to $45 a mile.

The average number of telephones would be two to the mile. My estimate does not include the telephones; the cost of telephones would be about $15 installed; the cost of installation about $3. The cost of the telephones used on that line would be about $12.

I have the minutes of the first meeting of that company; I organized it. They show the cost of construction; the total is $209.53 for ten miles of line for labor. In addition, there would be the cost of the poles, seven at 75 cents each, $5.25, and twenty miles of wire, which would cost $160. The entire cost of construction would be $45 per mile without instruments. I have organized more roadways than any one man in Michigan.

I was interested in promoting the organization of roadways under the plan by which the farmers themselves construct the line. This was because the farmer would not pay the rate and I pro-
162 moted these lines and in that way became familiar with roadway construction. The cost of construction of average roadway telephone lines such as is common on the roadways throughout Michigan would be $45 per mile.

There would be about thirty-two lines into Lapeer; I am familiar with most of them. The Mayfield and Deerfield is not as good a line as other lines that run in there; this is just as poor a one as we have there. I am familiar with the Mayfield Telephone Company, which is a good roadway line. It is between six and seven miles long; cedar poles and metallic circuit.

Cross-examination by Mr. WYKES:

The Mayfield and Deerfield is a metallic circuit on cedar poles. They use the push button type of telephone, which cost about $12; telephones could be purchased for considerably less than that; on farm lines they could be purchased for $8 or $9 a set, which would answer the purpose. They ordinarily set a 20-foot pole about four and a half feet in.

They have twenty's and twenty-five's on the Mayfield and Deerfield. The character of the soil makes an impression on the price of the line, as it takes longer to dig a clay hole than a sand hole. The approximate cost of setting the poles per mile of line would be $20. It would take four men a day to dig the holes and set poles for a mile.

To string the wire and put on the brackets would take two men a little better than one day, where the line is metallic. It would take one man one day to string a mile of wire.

The labor for a mile of line would be four days for setting posts and one day for stringing the wire. There would not be anything more, except guying, etc., or trimming trees. That would
163 not take as much time as to string the wire.

I could not tell you why if the entire work on a mile of line could be done in six days, the expense account on the Mayfield and Deerfield line showed thirteen and a half days to the mile of line.

The following statistics are taken from the Michigan State Gazette for August, 1905, and August, 1910:

	1905.	1910.
Number of exchanges	200	197
Number of toll stations	688	642
Number of exchange subscribers	72,082	143 365
Number of sub-license exchanges	53	200
Number of sub-license exchange subscribers	4,993	43,151
Number of rural exchanges	33	54
Number of rural exchange subscribers	1,508	5,339

The rural exchanges and rural exchange subscribers do not include the company's farm line subscribers, which number 25,000.

[Here follows tabular statement.]

Name of company.	Capital stock issued and outstanding.	Bonds issued and outstanding.	Current liabilities.	Miscellaneous liabilities.	Profit and loss Cr.
Michigan State Tel. Co.	$8,285,000	$8,366,000	$562,830	[a] $1,213,774	$702,102
Citizens Tel. Co. of Grand Rapids	3,321,530	.....	387,730	[b] 133,000	35,035
Citizens Tel. Co. of Jackson	[b] 216,000	216,500	112,411	Und. profits	23,590
Union Telephone Co., Alma	700,000	.....	1,145	24,784	83,450
Totals	$12,552,530	$8,582,500	$1,064,116	$1,371,558	844,177

[a] Includes reserves, $1,045,472.
[b] Surplus, $133,000.
[c] Includes other permanent investments, $167,104; materials and supplies, $99,740; cash a $497,990.
[d] Includes materials and supplies, $3,193, and cash and current assets, $269,810.

Details of Complainants' Property and Business for 1909.

ıpt ies.	Miscellaneous liabilities.	Profit and loss Cr.	Total liabilities.	Cost of property.	Assessed value, 1909.	Tax, 1909.	Mileage of lines.	Mileage of wire.	Number of exchanges.	Number of toll stations.	Number of telephones.	Dividends paid.	Interest paid.
,630	[a] $1,213,774	$702,102	$19,129,707	[c] $18,416,113	$11,500,000	$237,743	[g] 11,884.55	[g] 302,108.21	[g] 202	[g] 594	[g] 126,241	$309,887	$440,608
,730	[b] 133,000	35,035	3,877,295	[d] 3,710 774	2,300,000	47,549	[i] 3,849.50	[i] 73,353.00	[i] 78	[i] 172	[i] 29,626	255,398	4,465
,411	Und. profits	23,590	352,501	[e] 338,242	160,000	3,308	[i] 104.05	[i] 6,521.00	[i] 3	[i] 1	[i] 2,636	None.	17,616
,145	24,784	83,450	809,379	809,379	545,000	11,267	1,669.00	13,696.00	55	38	8,827	54,000	None.
,116	$1,371,558	844,177	$24,168,882	$23,274,508	$14,505,000	$299,867	17,507.10	395,678.21	338	805	167,330	$619,285	$462,689

terials and supplies, $99,740; cash and current assets,

current assets, $269,810.

[e] Includes cash and current assets, $6,466.
[f] Includes cash and current assets, $12,193, and materials and supplies, $9,207.
[g] In Michigan.
[h] Not included in total liabilities.
[i] Figures furnished on request for 1909 statistics.

CRESCENT A. PARKER recalled.

Direct examination by Mr. WYKES:

For all the years since the average rate system has been in effect (1902 to 1909, inc.), the average of the average rate is $17.57 for each thousand dollars of assessed valuation. The reason for the high rate in 1909, of $20.67 was because of greater expenditure that year; it was legislative year.

I made a total based upon the testimony of complainants' witnesses and Exhibit B, showing the aggregate value of the companies not assessed. The total, including the M. S. T. property, in the hands of exempted companies is $262,013. This does not include several companies afterwards brought in by Mr. Berry for
163*a* which no value is stated. Where the complainants' witnesses produced no figures we used the reported figures. The tax on this amount at the average of the average rate would be $4,603.57. Deducting from that amount the property of M. S. T. in the hands of exempted companies of $31,765, would leave a total of $230,338. The tax on that, at the average of the average rate would be $4,047.04.

A number of companies appearing on Mr. Berry's list as M. S. T. roadways, I have found in my list under another name.
163*b* Arthur Allen appears on page 143, and we have a report from the Benden Rural signed by him as manager.

Charles D. Brown, we have a report from the Broomfield Telephone Company, he signs as treasurer.

We have a report from the Winn Rural, which is signed by Lester Briggs as Treasurer, which will take the place of Lester Briggs on page 143.

Mr. E. F. Dunsmore signs as manager report from Maple City Rural. Elmer Forbes signs as manager for the Chippewa Lake Telephone.

J. Angus Gowing, we had a report from A. J. Lock as his successor.

John Lardie, signs as manager of the Peninsula Farmers Telephone.

John Snyder send- in a report in the name of the Star Telephone Company, I have forgotten in just what capacity however.

Adam Seegmiller sends in a report under the name of the Farmers Mutual, I think of Summit City.

R. L. Winslow appears here as assessed under the name of Laporte Telephone Company.

There is J. S. Horn, Empire Rural.

Q. By reason Mr. Parker, of those companies being in your list under one name and in Mr. Berry's list under another name, do they appear twice in the totals that you have just given?

A. Yes, sir.

Mr. CAMPBELL: Objected to as argument rather than as testimony.

Q. What is the amount that Mr. Berry places on those companies?

A. $13,985.

Q. And deducting that from your $262,000, leaves what?

A. $248,118.00.

Q. Deducting it from the same figure after taking out the Michigan State property, is what?

A. It would be $216,353.

Q. Turn to the next page in the transcript Mr. Parker, which is the list that Mr. Berry gave of the M. S. T. roadways. Do you find any of those companies that you have under another name?

163c A. Yes.

Q. What are they?

A. I have C. L. Crane under some other name. I have the Francisco Telephone Company under the name of the Chelsea and Francisco.

H. H. Halladay, some of these managers of roadways are listed by number here, but I have some of them by local names, just which I cannot say. For instance, instead of being known by the check number as they come under your board, I have them by some local number.

Bert Marshall, J. E. Perry, South Manchester lines, three lines there under numbers #70, 73 and 83—I said you have them here under numbers, I feel pretty sure I have those companies under some name.

Q. Have you been able to make any systematic check between these and the reports that you had Mr. Parker, or is this duplication that you have testified to simply the result of those companies that you have recollected?

164 —. It is more a matter of recollection than of investigation; I have not had time to check over the list. There are a number of roadways on that list that I have not been able to find. There is Bridgeton Roadway, Battle Point; Cadillac and Pine River, East Mitchell Roadway, Emmett Telephone Company, Grant Township, Hand Roadway, Lancaster Telephone #1, Lancaster Telephone #2, Leoni Central, North Berlin, Northwest Bethany, Owl Telephone, Porter Township, Porter Line Roadway, Riverton Central, River Raisin, St. Clair Mutual, Spaulding Roadway, Salsburg, Van Town-Mason.

For those I put Mr. Berry's figures into the totals that I reached.

By Mr. BERRY: We have only the names that are on the contracts executed; as they change officers, we didn't keep a record of it; I can tell Mr. Parker just where he can get the necessary information for every one of these companies.

By Mr. PARKER: Since we got that list from the M. S. T., over a year ago, we have addressed mail to them, but it came back; they were sent report blanks and addressed several times.

(The inventory appraisal sheet of the Citizens Tel. Co., Citizens Tel. Co. of Jackson and Union Tel. Co. produced, marked defendant's Exhibits 1, 2, and 3, respectively, of November 10, 1910, and introduced in evidence.)

Cross-examination by Mr. CAMPBELL:

In making the computation of values of non-assessed properties I took the values furnished by complainants' witnesses, and,
165 for companies not contained in their lists, took the figures of Exhibit B, which are the values stated in reports. The only deduction I made was of the property of the M. S. T. in the hands of the exempted companies.

I am not in a position to say that this property was not assessed against the M. S. T. I think that question was asked me once before, and I showed that the assessments are considerable in excess of the inventory, and that the inventory value didn't include certain property in the hands of other companies. I made the deduction so as to get the property of these companies which actually belong to them. The property in their hands would be assessed to them or to the owners. It would be proper to assess it in the hands of the companies which hold it.

Redirect examination by Mr. WYKES:

Of the new companies we have discovered and added to the non-assessed list, I don't know how long they have been in existence: I don't know that we discovered very many that were in existence last year. We discovered a good many this year from Mr. Berry's list. There is quite an increase. It is quite likely that there are a number of others that I haven't found.

ARTHUR H. MILLER, a witness for complainants.

Direct examination by Mr. CAMPBELL:

I reside in Mayfield township, Lapeer county; am a farmer; am familiar with the Mayfield Tel. Co., being its secretary and treasurer. It was organized in 1906; is a farmers' rural line, being a mutual association between the members along the line. We connect with the M. S. T. line out of Lapeer.

We have nine to ten miles of line. It is a good line, of cedar poles, with galvanized protectors and insulators. I had
166 charge of building the line as foreman. I was secretary of the meeting in charge of purchasing materials.

I kept a record of the cost of construction (produced and marked Exhibit N); I shouldn't say this covered the entire cost. Each party is separate in this book. (The witness gives the charges against the several members in detail as follows:)

Steve Slater	$25.13
John G. Slater	24.75
Cranson Wilder	23.25
Arthur Sharpe	23.25
Fred Potter	19.50
Edison Baker	21.87
Robert King	23.75
A. B. Miller	21.75
A. H. Miller	23.25
Wm. Abbott	23.25
Eddie Weston	22.40
John Gordon	23.25
Total	$242.15

The items given cover cash payments and labor. No record was kept of team work; that is additional. We started with twelve telephones.

Our line is substantially the same as the roadway line of the M. S. T. out of Lapeer; the poles are cedar and the other construction substantially the same.

Cross-examination by Mr. WYKES:

These figures cover six miles of construction; our line is the best constructed out of Lapeer, with the best and largest poles, set well into the ground, with a good class of wire. We put in enough labor to make it stand up.

At our meeting we agreed to allow $1.50 a day for labor,
167 with no team charges. We rent our telephones of the M. S. T.; they operate the switchboard for all the companies at Lapeer; none operate their own. All the telephones out of Lapeer are rented of the M. S. T. at so much per year.

We rent poles by the mile to two other roadway companies and so have an income of $10 a year; we haven't had to spend that money for maintenance; when we have any trouble the president or I locate it with not charge for time. We keep the $10 to pay the lineman we have to have once in a while. The names of our members appear in the M. S. T. directory, which is furnished us, and we get connections on Lapeer exchange free; in addition to the rental we pay the M. S. T. for toll messages.

Our rental is $7 per year per phone, covering the service, except where we go outside the Lapeer district. I collect this and pay it in; we are under a five year contract with the M. S. T. to pay $7 for its telephones on the line. We now have nine to ten miles of line in two lines running into the M. S. T. switchboard.

When a new member wants to get on, the M. S. T. comes out and connects him. We haven't had anything of that kind since we divided the line; we have a resolution that we won't take but nine members on each line. We are not holding ourselves out as giving telephone service to any one that comes along and asks for it; the line is for mutual convenience of members. When the last six members went on, the M. S. T. installed the telephones.

Their lineman come out and put them in; they gave them the numbers and printed them in the directory with those numbers, and we didn't have anything to do with it; connecting them up and getting them into the service with the M. S. T. was done by that company.

So that the only operations of your company are these, you build and own the line, you make a contract with the Michigan State Telephone Company for service, you collect the fee for that service from your members and turn it over to the Michigan State Telephone Company, and you maintain your own line. What else do you do?

A. That is all.

There has been little depreciation on our line; I think it
168 as good as when put in. There may be some depreciation on the poles in the ground, though I don't see any.

CRESCENT A. PARKER recalled.

I have tabulated the figures Mr. Miller just read from Exhibit N; they are as follows:

Setting poles, 43 days; drawing poles, 5½ days; on wire, 8 days; on phones, 2 days; trimming trees, 2½ days; unclassified labor, 2 days. That would be 7 1/6 days per mile to set the poles. Mr. McQuaid stated that it should take four days per mile.

A. H. MILLER recalled.

Cross-examination by Mr. WYKES:

Exhibit N shows a resolution to pay $1.25 per day for labor. The figures given are based on $1.50 per day. I could not tell you why that was. No money passed on account of that labor.

The first quarter's rent of about $21 was paid out of the collections for construction and it appears in the totals already given.

By Mr. CAMPBELL:

I think the quarter's rental would be more than offset by the expense of teams not charged for.

WILLIAM H. CORK, a witness for complainants.

Direct examination by Mr. CAMPBELL:

I live at Cedar, Leelanau county, and run a store; I have a rural contract with the M. S. T., entered into three years ago. I have promoted rural routes there and operate an exchange. When I first took this up the Solon Tel. line, four and a half miles of circuit and fourteen members, a farmers' mutual organization was in existence.

Up to 1909, I had assisted in organizing three lines running
169 into my exchange; the Solon, Isadore and Good Harbor.

The Good Harbor is a double circuit with thirty-eight subscribers; the Isadore, the same, with eighteen subscribers. I made a report to the tax commission in 1909 (marked complainants' Exhibit O, November 11, 1910.)

Since June, 1909, three associations of the same character, built lines connecting with my exchange. I reported in 1910 (report marked complainants' Exhibit P, November 11, 1910, introduced in evidence.)

The phones on all these lines are owned by M. S. T.; under my contract with subscribers, each subscriber pays me $7 a phone; I pay the M. S. T. $3 a phone and $1 for each drop on the switchboard.

The $711 reported in 1910 as income includes all collections, and the $3 I pay the M. S. T. If each subscriber owned his own telephone the rental would be reduced from $7 to $4 per subscriber. Under my contract with M. S. T. I can make such arrangements with subscribers as I choose; the M. S. T. does not control whether I collect from the individual or association.

Cross-examination by Mr. WYKES:

My contract is the ordinary form of rural contract. These lines are what they call rural lines and are not roadways. They are all owned, constructed and maintained by associations of farmers. We use the regular form 56 furnished by M. S. T. for contracts with each subscriber.

My contract is the same with a renter as with a stockholder. Whether a man comes onto a line, in addition to those who own, depends on the owners, not on me; after they let him in he makes
arrangements with me on form 56; under that I collect $7 for
170 the service that I and the M. S. T. furnish him. Of that I keep $4 and turn $3 over to the M. S. T. Generally when the line is being built, the M. S. T. furnishes a man to help; he usually stays until the line is completed and installs the telephones.

This cost is paid by the M. S. T., not by the line; when there is a defect in a telephone the user turns it in and the M. S. T. fixes it; that is covered by the rental of $3. The only difference I know of between roadways and rurals is that on the roadway the company is responsible as a whole for all telephone rentals.

The farmer builds his line and connects to the terminal pole in front of the office and the M. S. T. cables into the switchboard. Roadways are built to the city limits and taken care of from there in, whether the distance be long or short.

The lines I serve are all rural ownership; we can put our subscribers onto the M. S. T. toll line; without toll we can connect members with the Maple City, which are M. S. T. telephones, on a rural exchange, which is the same as mine; we get there over a line built by subscribers. We cannot connect with any M. S. T. telephone without charge; that company hasn't a rented telephone north of Solon to my knowledge, except those rented on the rural plan.

Each roadway out of my exchange is separate from the others; there is no arrangement between them, except such as they have by exchanging through me. The $711 reported for 1910, covered the entire $7 per member received.

From that I paid the M. S. T. $3 per telephone. The items of repairs, renewals and operating are for the board; I have no line maintenance. The board belongs to the M. S. T.; I don't own anything but the building; everything necessary to operate the
171 service belongs to the M. S. T. and under the contract I act as their representative in furnishing service.

The property I report for is made up of eight different institutions.

CRESCENT A. PARKER recalled.

Direct examination by Mr. WYKES:

I was in error when I stated that from the $262,000 of untaxed property, a deduction of $13,985 should be made on account of duplication. The error occurred in a matter of memory.

Cross-examination by Mr. CAMPBELL:

The $262,000 should stand, with the deduction of $31,765 as property of the M. S. T. in the hands of exempted companies.

In making my estimate I took the list of non-assessed lines from Exhibit B. That was made up from lists furnished by Messrs. Berry, Tarte and Melchers, and lists which I had, including all incorporated companies and those which had been specifically taxed.

I found a few companies through my field-men. I didn't include the Solon, Good Harbor, Town Line or Cedar, mentioned by Mr. Cork; East Kasson, Isadore or Centerville. Those were not so included in Mr. Berry's list as he only reported the name of the rural manager.

In the Dansville exchange there are a number of lines; I think about 270 telephones, probably fifteen or twenty lines. I cannot tell you whether I included any of those associations unless you give me the names. I have companies that Messrs. Berry, Tarte or Melchers didn't give me. The Dansville exchange was assessed; I take it Mr. Cork will be assessed this year.

The Fayette Rural of 220 telephones was assessed; I don't
172 know the names of the companies into that board. The Hanover Tel. Co. is made up of fifteen or twenty companies. The North Adams Tel. exchange would be the same; I couldn't tell the names of them.

There are eighteen companies there; Mr. Berry's figures on it are $12,000. The exchange is assessed. The North Adams Tel. Co. and roadways coming into it are not assessed. The North Adams Tel. Co. is the only one of the eighteen companies in that exchange whose name I can state is included in the lists of non-assessed companies.

I cannot say whether the names of companies running into exchanges of the character of the Dansville, North Adams and Fayette Rural appear in the lists of non-assessed companies. Mr. McCormick was over at Dansville; I judge we had one of them, but I don't know whether we had more. Mr. Cook will probably be assessed this year; if on the rural lines he serves, the members own their own telephones, and his receipts were reduced by the amount of $3 per phone paid to the M. S. T. he would not be assessed.

By Mr. WYKES: I don't know whether, if the facts surrounding Mr. Cork were laid before the Board of Assessors, they would assess him or not. I report all companies and all their earnings to the board. I don't say whether they are subject to assessment or not; I give the board all the information I can. So far as these roadway companies connect with a taxed exchange, I don't know whether they are on my list; I may have them. I have a number of telephone companies here that these witnesses have not listed; I added thirty-seven we had on our list to their list. I make up my computation on the theory that the telephones on rurals were included in
Mr. Berry's number of telephones, and if they are his value
173 for the rural at a certain amount per station would include the roadways and is found in the item of $262,000.

W. J. BERRY recalled.

Cross-examination by Mr. Wykes, appears on transcript pp. 856-864.

CRESCENT A. PARKER recalled.

Direct examination by Mr. WYKES:

Since testifying to a computation of a total of $262,000 for the value of exempted telephone property as shown by the highest figures in the record, I have added to that figure. I have added the costs as shown in Exhibit B, wherever there were no figures produced by complainants for the roadway companies.

The total amount of property, for 1909, as shown by the highest figure in the record, for all of the exempted telephone properties in Michigan for which any value has been proven in this record, is $296,027.34. The tax upon that amount at the average of the average rate would be $5,221.20. Taking from that total the value of the M. S. T. property in the hands of these companies, leave $264,262.34, upon which the tax at the same rate would be $4,643.09. I have from the testimony classified the different character of exempted lines. I find there are mutual roadways, 277; rurals composed of mutual companies, 34; sub-licensees, 34; companies for profit of all classes, 13; companies, mutual or co-operative and not for profit, of all classes, 305. These have all entered into the totals I have given.

The companies where there was testimony that they were for profit other than for cheap rental of telephones or managers' income, with the highest amount of property in their hands shown by the record are the following:

Name.	Amount.
Amble Telephone Co.	$438
M. A. Bates	4,060
East Shore Tel. Co.	1,064
S. A. Hemstead	2,010
Hills Rural	981
Houghton Lake Tel. Co.	714
R. C. Kinney	2,612
Leota Tel. Co.	224
Andrew J. Moore	351
A. E. Neidermeier	1,220
Northeastern Telephone Co.	1,200
Onekema Telephone	317
Port Sheldon and Lake Shore	600
William R. Stafford	243
F. H. Taylor	2,000
G. S. Townsend	780
Wallace Telephone Co.	490
Total	$19,304

The tax on their total value of $19,304 at the average of the average rate would be $339.16.

174 Of the companies for profit, four with a total property of $4,498 were new in 1909, and will be taxed for 1910. The tax on the balance of that class at the average of the average rate would be $250.04. For this class of companies the record shows 427 telephones, mileage, 245; earnings for 1909, $3,584.

The record shows the amount of property of all companies, not conceded to be mutual companies not for profit other than cheap rental of telephones, taking the highest figures, $113,906. Of this $113,906, there is proof that $84,785 is the property of those which are mutual or co-operative or non-profit making, and there is no proof to the contrary. Of the companies not admitted to be non-profit making, aggregating in property $113,906, I find that those with aggregate cost of property of $43,338 will be taxed for 1910.

There were not very many lines in the exempted list for which I could find no value in the record. Of those that there were I identified some as coming within Mr. Berry's values. I ran across four that went into the Brooklyn switchboard, and were in by reason of his value on the switchboard association.

Cross-examination by Mr. CAMPBELL:

Since the last hearing I have increased the totals of my computation of exempted companies $33,923.47. There was no error. Before I had merely taken the testimony for the total of the values. This time I added, where there was no testimony, the figures as reported in last year's reports, shown on Exhibit B. Before, I gave the value of the non-exempted properties, using the highest figures in the testimony; my figures before were based solely on complainants' testimony. I added the $33,923 by taking the cost of property as reported in the annual reports last year, where there was no testimony on the part of complainants.

175 I took the figures of complainants' witnesses for everything that they submitted any value on. They didn't cover the entire list. There were lines belonging to companies which had reported in the non-exempted class which I didn't include in my former computation. I still deduct $33,761 as the amount of M. S. T. property in the hands of exempted companies.

It is shown in the testimony that that was their property in the hands of roadways, sub-licensees and rurals given in the list. I couldn't say whether or not that amount has been assessed against the M. S. T. I don't know whether the $296,027 represents the cost of all telephone companies in the state not subject to taxation. I have heard of two or three companies which do not appear on any of the lists of this case; it wouldn't include those. On the lists for 1910 are perhaps seventy-five or eighty exempted companies which filed no reports in 1910. They are not included in the computation. There are other telephone systems in the state besides complainant companies.

There is the Valley Home of Saginaw, operated the same as complainants, also the Home, 9,096 telephones; South Michigan, 3,550

telephones; Swaverly, 1,100, and Benzie County, 775 telephones. I presume each of these companies have roadway lines running to a connection with them, though I don't know.

It has not been their plan of development. I understand the Valley Home Co. of Saginaw built their own rural lines. I don't know that they don't have roadway lines running into them in the same manner as the roadways of complainants. The Southern Michigan gave us a list of the telephones connecting with them; they didn't call them roadways. I couldn't say that I haven't included in the $296,027 the value of any roadway companies running
176 into the companies last named, because there are a number of telephone lines on my list that don't appear on the lists of complainants.

There is an aggregate of, at least $33,000, which does not appear in the lists of complainants' witnesses. The $296,027 was not made to cover an accurate computation of the value of all telephone companies in the state not subject to taxation. I have a list of the companies entering into that aggregate. It does not include the Huron Tel. Co. of Elkton, which was new with me this year, though it might have been in existence in 1909.

I have not the Babbitt of Haslet by that name; I have two or three companies down that way. I have not the East Leroy and Newton at East Leroy. The Citizens Tel. Co. of South Haven was not operating June 30, 1910. I haven't the Haight, Stannard Tel. Co. by that name. The Cambria Tel. Co. of Reading is not in the computation.

Nor the Osborne, Devils Lake, Summerset Center, Hoxie, Cook's Mills, Garden or Wheatland Center Tel. Companies by these names. I have a report from the Huron Tel. Co., 108 telephones in service, dated Oct. 14, 1910, which shows that they organized March, 1910.

I put in the Eaton Rapids and West Aurelius Tel. Co. at Eaton Rapids at $300, the value contained in their report; the Edenville, with eighteen telephones, at $192.

I have no other knowledge of the value of the property. J. L. Littlefield of Farwell at $175; the Loxley, with twenty-one telephones, at $47.50. A telephone line which would serve twenty-one telephones would probably be worth more than $47.50. Mr. Berry's roadways I included at the lump sum he gave without going into details. That included thirty-six or thirty-seven more companies than were on my list.

177 The Mutual of Stockbridge, with eighty-three, telephones at $90; the Northeast Leslie, with thirty two telephones, at $281. That would be fair enough if it didn't own the telephones, being well over $9 a phone.

The North Leona and Grass Lake, eleven telephones at $120; the Northwestern, Quincy, with twenty-one telephones at $55. This could be a correct estimate if the wire were strung on another company's poles. The Onondaga, with twenty-two telephones at $132; all they have is a switchboard.

I cannot say whether the lines running into that switchboard are included or not. The Portage Lake of Grass Lake, nineteen tele-

phones at $51; the Porterville and Onondaga at Leslie, I have no figure for.

The South Butler, with seven miles of line, $5; the South Ogden, $237; The Star Tel Co. of Alba, $38; The Star of Mecosta, $740; F. H. Taylor of Pickford, forty telephones, $2,000; Tompkins Exchange I had no figure for; Washington Center Mutual, Pompeii, $4,500.

The Whiteford, $27.50; Wolf Creek, with ten miles of lines and forty-five telephones, I have no value for; Citizens Mutual of Van Town, eighty-six telephones, I have no value for.

In the list there were some individuals in this way, that the individual operated the switchboard; where the gross receipts exceeded the $500 the individual was assessed.

In case of mutual companies where the assessment exceeded $500 I have treated them as a part of the gross receipts and they were included in the taxed list.

In the testimony 13 are all the non-assessed companies that I could find that operated for profit. Of the companies filing
178 supplemental reports stating they operated for profit, I think there were about twenty.

The information that these companies operated 427 telephones was derived from Exhibit B; it means the number of telephones shown in the testimony to be operated by these companies; the same is true of the miles of telephone line operated. There might be a greater number of telephones or greater mileage.

I gave it as a total of what the testimony shows. There are on the list four of the seventeen telephone companies which failed to report the number of telephones.

This is miles of line, the miles of wire might be considerably larger. The $84,785 is aggregate of companies which are mutual, where there was no proof that they were for profit. From the $113,906 given as the cost of companies which were not admitted to be farmers' mutual roadways, I deducted the $84,785, because as to them, there is no proof that they were not mutual and none that they were for profit; that is the aggregate of thirty-four companies and as to them there is proof that they are not for profit.

I mean proof in the stenographic record, e. g. the Brooklyn switchboard is one of that list. I don't recall testifying that the association would be taxed in 1910. The Burr Oak Mutual is also in that list. It appears on several pages in the record that that company is not organized for profit. (Witness gives references and reads from record.)

Page 142 of the record shows the value of that company to be $2,265. In some cases I took the value and in some cases the reported cost.

Redirect examination by Mr. WYKES:

We required of all telephone companies that have any great amount of property a list of the lines they connect with. The Valley Home people are the only ones who refused us. Our
179 report calls for information as to connections; we followed the reports up to locate all of the companies so far as we

could. We haven't since systematically tried to get them all; we have looked them up occasionally, when we have had a chance to.

When the board made its assessments of the M. S. T. and Citizens it had lists of their property in the hands of other companies. The exact figures were before them. I don't know of any exception in the law as to leaving out part of the property owned by a telephone company in making assessments.

From the reports generally I have no reason to believe that the figure for telephones is any more accurate than the one given for the cost of construction; errors occur in all of them I suppose. It is possible that where a low cost was reported that the particular institution was a switchboard. I stated an instance of that today.

I think these people intended to truthfully report the cost of their property belonging to the institutions reporting, and in most instances the reports were sworn to. Where we have an individual name on our list, I don't know that there is not some institution or organization behind it. I have found a number of instances where we first had the name of the individual and afterwards found that he represented some company. I have not any way of knowing that the list of companies Mr. Campbell read to me were not all new this year. I don't know whether they are telephone companies, except the Huron Tel. Co. I cannot say how many new companies reported in 1910 that were not in business in 1909. I suppose they were not in business. They might have been in business under some other name before. I found names on Mr. Tarte's, Melcher's and Berry's lists this year that I didn't find last year.

180 The number of companies on the supplemental reports who reported doing business for profit, may have been two or three less than the twenty, which I stated. There were no companies who in their reports stated that they were for profit that I didn't include in the $19,304. I didn't include those which added qualifying statements such as "for the benefit of cheaper rental of telephones."

The list of $19,304 was made up of seventeen companies. When I answered thirteen I referred to the companies shown to have been for profit by the complainants' witness. I found four more than their witnesses testified to and added their value where shown. The value of the companies shown to be doing business for profit and not taxed as shown by the assessment roll is nine one hundredths of one per cent of the entire value of the assessed companies as taken from the assessment roll.

W. J. BERRY recalled.

Direct examination by Mr. CAMPBELL. (Subject to objection that not proper rebuttal):

The Huron Tel. Co. was originally two companies, consolidated early in the year; our record shows 200 subscribers. Our records show the Babbitt of Haslet, sixty subscribers; the East Leroy and Newton Township at East Leroy is not a connection of ours; it has been operating for three years. The Citizens Tel. Co. of South Haven is a new corporation under that name; before that, for over

two years, they had a number of telephones in South Haven; it was a mutual concern, with thirty-two or thirty-five telephones.

The Haight, Stannard, is a farmers' line in Ontonagon county, with no connections with a toll company; they have existed three years. The Cambria Tel. Co. south of Hillsdale, with 162
181 subscribers, I understand are switched for by the Reading Tel. Co. The Osborne Tel. Co. is a farmers' exchange, sixty-one telephones, at Addison, which is one of our exchanges; has been in existence three years.

The Devils Lake Tel. Co. of the same character, has the same connections, with thirty-five telephones; for the Summerset Center our record shows 115 subscribers; the Hoxie, 107 telephones; these lines all have the same connection at Addison. Cook's Mills is small exchange with ten telephones in Delta county, connected with one of our sub-license companies at Manistique. The Garden Tel. Co. is a small exchange, sixteen subscribers in Manistique county. The Wheatland Center is a farmers' exchange, between North Adams and Addison, with enough subscribers to operate a switchboard.

Cross-examination by Mr. WYKES:

These figures of the number of telephones is from our reports as of June 30, 1909, though the figures for the Huron were obtained since May 1910. We obtained the figures from our connecting company, which is the only information we have of any of our connecting companies, except where we lease them all of the phones. These companies were none of them connected with ours in 1909, except the Osborne, Devils Lake, Summerset Center and Hoxie; some of them are not now. My impression is that the tax reports show the Addison taxed only for the switchboard and none of the farm lines running in would be taxed, if that is true. Six of the companies I have mentioned as connected with us operate their own exchanges.

Upon a rural, where the M. S. T. owns the exchange property, the value for an ordinary exchange would depend on the number of drops; they would average about twenty drops and the ex-
182 change property, including installation, would be worth probably $140. That price would not grow in proportion as the number of drops increased.

Some of our rurals exceed a 20-drop switchboard, but I don't think they will average it. Each rural manager requires about $140 in equipment to operate his switchboard and line.

[Endorsed:] File No. 22,657. Supreme Court U. S. October Term, 1912. Term No. 284. The Citizens Telephone Company, appellant, vs. Oramel B. Fuller, Auditor Gen'l of the State of Mich. Stipulation as to what shall constitute record. Filed Aug. 2, 1912.

Endorsed on cover: File No. 22,657. W. Michigan C. C. U. S. Term No. 284. The Citizens' Telephone Company, appellant, vs. Oramel B. Fuller, Auditor General of the State of Michigan. Filed May 8th, 1911. File No. 22,657.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 285.

THE CITIZENS' TELEPHONE COMPANY OF JACKSON, APPELLANT,

vs.

ORAMEL B. FULLER, AUDITOR GENERAL OF THE STATE OF MICHIGAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED MAY 8, 1912.

(22,656)

(22,658)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

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THE CITIZENS' TELEPHONE COMPANY OF JACKSON, APPELLANT,

vs.

ORAMEL B. FULLER, AUDITOR GENERAL OF THE STATE OF MICHIGAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

INDEX.

	Original.	Print
Caption	1	1
Bill of complaint	1	1
Motion for injunction	13	11
Injunction and return	14	12
Order to show cause	17	15
Order continuing hearing	19	16
Demurrer	20	16
Subpœna and return	24	17
Order continuing hearing	25	19
Order continuing restraining order in force	26	19
Opinion on demurrer	27	19
Order overruling demurrer, &c	30	22
Answer	31	22
Replication	35	25
Final hearing	36	26
Opinion on final hearing	37	26
Final decree	47	34
Order restoring injunctional order pending appeal	48	34
Petition for appeal and allowance thereof	49	35
Assignments of error	50	36
Appeal bond	52	37
Citation and service	54	38
Stipulation as to record on appeal	56	40
Clerk's certificate	58	40

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 5, 1912.

1 Original.

No. 1700.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS TELEPHONE CO. OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

Bill of Complaint.

Kleinhaus & Knappen, Solicitors for Complainant.
Henry M. Campbell, of Counsel.

2 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS TELEPHONE CO. OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

To the Honorable the Judges of the Circuit Court of the United States for the Western District of Michigan, Southern Division:

Your orator Citizens Telephone Company of Jackson a corporation, brings this, its bill of complaint against Oramel B. Fuller, the duly elected, qualified and acting auditor general of the State of Michigan, a citizen of said State of Michigan, a resident of the Western District of said State, and defendant herein, and

Respectfully shows and alleges as follows:

First. That your orator Citizens Telephone Company of Jackson is and at all times herein mentioned was, a corporation organized and existing under the laws of the State of Michigan, having its principal office or place of business in the City of Jackson, Michigan. That your orator is, and always has been organized for the purpose of conducting, and has conducted, the business of furnishing the public telephone service, under arrangements entered into between your orator and the various members of the public who avail themselves of your orator's services. That the business of your orator is conducted by telephone lines and other equipment and ex-

tends not only to various points within the State of Michigan, but also connects with other telephone lines and systems outside of the State of Michigan, whereby telephone business of an interstate character, consisting of messages between points in the State of Michigan to points without the State of Michigan and from points without the State of Michigan to points within the State of Michigan, is carried on and transacted. That the business of your orator is a large and constantly increasing one and is of great value to your orator and to the public, whom your orator, as above stated, serves.

Second. That prior to the year 1909 your orator was taxed by the State of Michigan, under and by virtue of the terms of Act No. 179, of the Public Acts of the State of Michigan of the year 1899 whereby your orator paid to the State of Michigan a tax of three (3) per cent on its gross receipts for the year in which the tax was laid,
3 which tax was, by the express terms of said act, laid and paid in lieu of all other taxes to the State of Michigan. That in the year 1909, at its regular session, the legislature of the State of Michigan passed a bill which purported to amend the title and sections 1, 4, 5, 6, 8, 9, 10, 13, 14, 18 and 21 of Act No. 282 of the Public Acts of 1905, which act of 1905 was a previous act of the legislature of the State of Michigan providing for an ad valorem assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies and fast freight line companies and for the levy of taxes thereon by a state board of assessors. That said Act No. 282 of Public Acts of 1905 did not in any way apply to telephone companies, which were and had been taxed under the act of 1899, hereinbefore referred to, providing for a specific tax upon the gross receipts of telephone companies. That said Act No. 49 of the Public Acts of the State of Michigan for the year 1909 attempted to include within its terms the taxation by the same state board of assessors of the property of telephone companies, as by reference to said act will more fully and at large appear.

Third: That the State Board of Assessors of the State of Michigan in the year 1910, at the regular session of said board, as provided for by said Act No. 49 of the year 1909, attempted to assess, and did assess the property of your orator at the amount of $160,000.00, and fixed, the tax payable to the State of Michigan by your orator for the year 1909 under the terms of said act, at the sum of $3307.73 *dollars*. That under section 14 of said Act No. 49 of the year 1909 the taxes levied, under the terms of said act, become payable to the state treasurer of the State of Michigan on the first day of April following the assessment and levy thereof, and if not paid on or before the first day of May following shall be considered in default, and shall bear interest thereafter at the rate of one (1) per cent per month, or any fraction thereof. It is further provided by said section 14 of said Act No. 49 of the year 1909, that the taxes so extended against the companies assessed or purported to be assessed under the terms of said act, shall become forthwith a debt from each of said companies to the State of Michigan

and shall constitute a lien upon all the property of said companies, real, personal and mixed, which lien shall take precedence of all demands, judgments, assignments by warranty deed or otherwise or decrees against said companies, which lien and debt may be enforced by seizure or sale of said property, or such portion thereof as may be necessary to satisfy the same, as in said act provided, and that it shall be the duty of said state board of assessors to annex to the tax roll made by it upon the completion thereof, a warrant signed by said state board, or a majority of them, commanding the auditor general of the State of Michigan, the defendant herein, to collect the several sums mentioned as taxed against the companies in said roll, and authorizing and commanding him, the said auditor general, defendant herein, in case any corporation, company or person named in the assessment roll shall neglect or refuse to pay its tax, to levy the same by distress and sale of the properties of said corporation, company or person, or such portion thereof as
4 shall be necessary to raise sufficient money to satisfy said tax and the expense of said sale, after giving the same notice of said sales as provided for in general laws of the State of Michigan for the sale of property seized for taxes and offered for sale. And said section further provides that said auditor general may bring an action in the name of the people of the State of Michigan, in any court of competent jurisdiction in the State of Michigan, or in any other state, for the enforcement of said lien, and upon recovery of judgment or decree therein, the same may be collected by execution, levy and sale, as in other cases upon judgment in courts of record.

That in pursuance of the provisions of said section a warrant was duly annexed to the assessment roll commanding the defendant, as auditor general, to collect said taxes, which warrant was duly delivered to said defendant, who now threatens to proceed thereunder and enforce the same against the property of your orator in the manner provided in said section 14.

Fourth. That prior to the year 1909 the telephone companies within the said State of Michigan were taxed by said State only upon a percentage of their gross receipts, as a specific tax, which tax was estimated and levied by officers of the State of Michigan other than said board of assessors, and the property of said telephone companies was in no wise subject to assessment or tax by said state board of assessors, nor did said state board of assessors have any jurisdiction to tax or attempt to tax the property of telephone companies. That said Act No. 49 of the Public Acts of the State of Michigan for the year 1909 attempted to amend the previous act of the State of Michigan of 1905, to-wit, Act No. 282, so as to include within the properties assessed and taxed by said state board of assessors, the property of telephone companies, and attempted to give to said state board of assessors jurisdiction and authority to assess and tax the properties of telephone companies, which prior to the passage of said Act No. 49 of the Public Acts of 1909 had not been in any way subject to the taxing jurisdiction of said state board of assessors.

That the provisions of said Act No. 49 of the Public Acts of 1909,

insofar as said act purports to affect telephone companies are as follows:

An Act to amend the title and sections one, four, five, six, eight, nine, ten, thirteen, fourteen, eighteen and twenty-one of act number two hundred eighty-two of the public acts of nineteen hundred five, entitled "an act to provide for the assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies and fast freight line companies, and for the levy of taxes thereon by a state board of assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act."

The People of the State of Michigan enact:

SECTION 1. The title and sections one, four, five, six, eight, nine, ten, thirteen, fourteen, eighteen and twenty-one of act number two hundred eighty-two of the public acts of nineteen hundred five, entitled, "An act to provide for the assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies and fast freight line companies, and for the levy of taxes thereon by a state board of assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act," are hereby amended to read as follows:

Title.

An act to provide for the assessment of the property by whomsoever owned, operated or conducted, of railroad companies, union station and depot companies, telegraph companies, telephone companies, car loaning companies, stock car companies, sleeping car companies, express companies, refrigerator car companies, and fast freight companies, and all other companies owning, leasing, running or operating and freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State, and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act. * * *

SECTION 4. It shall be the duty of said board to make an annual assessment upon an assessment roll, to be prepared by said board, of the property, by whomsoever owned, operating or conducted, and having a situs in this State as hereinafter defined, of railroad companies, union station and depot companies, telegraph companies, telephone companies, sleeping car companies, express companies, car loading companies, stock car companies, refrigerator car companies, and fast freight line companies, and all other companies owning, leasing running or operating any freight, stock, refrigerator or any other cars not being exclusively the

property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State: Provided, That the property of telegraph and telephone companies whose gross receipts within this State for the year ending June thirty do not exceed five hundred dollars shall be exempt from taxation. All telegraph and telephone companies doing business in this State shall make the report required by section six of this act to the State Board of Assessors: Provided, That such report for the year nineteen hundred nine shall be made and filed with said board on or before the first day of November, nineteen hundred nine.

SECTION 5. The term property, as used in this act, shall be deemed to include all property, real or personal, belonging to the persons, corporations, companies, co-partnerships and associations subject to taxation under this act, including the right of way, road bed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph and telephone poles, wires, conduits, switchboards, and all other property used in carrying on their business and owned by them respectively, and all other real and personal property, and all franchises—said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property: Provided, However, That this definition shall not include, apply to, or subject to taxation, such real estate as is owned and can be conveyed by such persons, corporations, companies, co-partnerships and associations under the laws of this State which is not actually occupied in the exercise of their franchises, or in use in the proper operation and conduct of their business; but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon as is other real estate in the several townships or municipalities in which the same may be situated. The term company, corporation, co-partnership, association, or person, wherever used in this act, shall apply to and be construed as referring respectively to any railroad company, union station and depot company, telegraph company, telephone company, sleeping car company, express company, car loaning company, stock car company, refrigerator or fast freight line company, and any other companies owning, leasing, running or operating any freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State; and to any firm, joint stock association, co-partnership, corporation, or other association or person engaged in carrying on any business, the property of which is subject to taxation under this act. The term "property having a situs in this State" shall include all the property, real and personal, of the persons, corporations, companies, co-partnerships and associations enumerated in its act, owned, used and occupied by them within the limits of this State, and also such proportion of their rolling stock, cars and other property as is used partly within

and partly without this State, as herein provided to be determined. * * *

SECTION 9. Subsequent to the filing of the reports required in the preceding sections, and prior to the fifteenth day of January in each year, it shall be the duty of the State Board of Assessors to prepare an assessment roll as provided in section four of this act, upon which they shall assess, at the true cash value, on the thirtieth day of June next preceding the time of making said assessment, all the property of the companies herein enumerated, subject to taxation under this act, which said assessment shall not be final until reviewed as hereinafter provided. For the purpose of arriving at the amount and character and true cash value of the property belonging to said companies as appearing upon the assessment roll for the purpose of assessment and taxation, the said board may personally inspect the property belonging to said companies, and may take into consideration the reports filed under this act, the reports and returns of said companies filed in the office of any officer of this State, and such other evidence or information as may be obtainable or possessed by said board, bearing thereon. * * * In determining the true cash value of the property of each telegraph company and telephone company which owns, leases, operates or uses lines partly within and partly without this State, the said board shall be guided, in ascertaining the property subject to taxation in Michigan, by the proportion which the number of miles of telegraph or telephone lines controlled or used by said company as owner, lessee or otherwise, within the State of Michigan, bears to the entire mileage of telegraph or telephone lines controlled or used by said company, as owner, lessee or otherwise, both within and without this State. * * *

SECTION 10. Upon said assessment roll, after the name of each of the companies assessed thereon, shall be placed a general description of the property of said companies, which shall be deemed to include all of the properties of said companies liable to taxation under this act. * * * In the case of telegraph and telephone companies, the following general description may be used: "Real estate, exchanges, switchboards, conduits, telegraph and telephone poles, and lines, and other appurtenances, and all other property used in carrying on the business of said company, and subject to taxation by a State Board of Assessors." * * *

That the subsequent provisions of said act relate to the collection of said tax as in paragraph three above cited.

Fifth. That Section 4 of said Act No. 49 of the Public Acts of the State of Michigan for 1909, above quoted, contains the proviso that property of telegraph and telephone companies whose gross receipts within the said State of Michigan for the year ending June 30th, preceding each and every assessment, do not exceed the sum of $500 shall be exempt from taxation by the said State of Michigan.

Your orator charges it to be a fact that there were at the time of the enactment of said Act No. 49 and now are many corporations, companies and persons carrying on the telephone business under the same conditions as those under which your

orator transacts its business within the State of Michigan whose gross receipts for each year, and particularly whose gross receipts within the said State of Michigan for the year ending June 30th, 1909, do not and did not exceed the sum of $500; and that under and by virtue of said proviso in said Section 4 the properties of said telephone companies are exempt from all taxation.

Your orator, therefore, avers and charges that the exemption of said telephone companies whose gross receipts within the said State of Michigan do not and did not exceed the sum of $500 for the year ending June 30, 1909, is an unlawful, unreasonable and arbitrary discrimination against your orator, merely and solely because of the amount of business done by your orator; and that, therefore, the assessment and tax upon the property of your orator, under the terms of said act, is an arbitrary and unlawful exaction, and unless cancelled and restrained by this honorable court will deprive your orator of its property without due process of law and will deny to it the equal protection of the laws, in violation of Section 1 of Article XIV. of the Constitution of the United States and of Section 16 of Article II. of the Constitution of the State of Michigan. That said exemption is based upon no reasonable ground and affords no reasonable basis of classification, but is arbitrary and unlawful.

Sixth. Your orator further shows and charges it to be a fact that said Act No. 49 of the Public Acts of the State of Michigan for the year 1909, in so far as it attempts to include within its terms, or to subject to the taxing jurisdiction of the State Board of Assessors of the State of Michigan, the property of telephone companies
8 is void and of no effect, under and by virtue of the provisions of the Constitution of the State of Michigan. That Section 21 of Article V. of the Constitution of the State of Michigan provides that no law shall embrace more than one object, which shall be expressed in its title. And your orator charges that the purpose of said provision is not only to inform the legislature, but the people of the State as well, of the character of pending legislation. That prior to the passage of said Act No. 49 of 1909 the properties of certain specified classes of corporations other than telephone and telegraph companies were taxed under the provisions of Act No. 282 of the Public Acts of the State of Michigan for the year 1905, as hereinbefore stated. That the title to said Act No. 49 of the year 1909 is as follows:

"An Act to amend the title and Sections 1, 4, 5, 6, 8, 9, 10, 13, 14, 18 and 21 of Act No. 282 of the Public Acts of 1905, entitled 'An Act to provide for the assessment of property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies and fast freight line companies and for the levy of taxes thereon by a State board of assessors and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act.' "

That an examination of the body of Act No. 49 of 1909 discloses for the first time that said act purports to include within its terms, and to add to the classes of corporations to be assessed by said State

Board of Assessors the property of telephone companies, corporations which engage in an entirely different business from the corporations heretofore assessed by and subject to the taxing jurisdiction of said State Board of Assessors, and which corporations were never before assessed by said State Board of Assessors. That said Act No. 49 of 1909 is an act amendatory merely of Act No. 282 of 1905, and there is nothing in the title to said Act No. 49 of 1909 to indicate in any way an intention of broadening the previous act or of conferring upon said State Board of Assessors the power of assessing or taxing new classes of corporations or business, and particularly telephone companies. That for this reason said Act No. 49 of 1909, in so far as it attempts or purports to subject to the taxing jurisdiction of the State Board of Assessors of Michigan the property of telephone companies is in direct violation of the Constitution of the State of Michigan, as above cited, void and of no effect. That, in consequence, the said State Board of Assessors had no jurisdiction to assess the property of your orator or to tax your orator on the basis of such assessment or upon any basis; and the enforcement of said tax will deprive your orator of its property without due process of law and deny it the equal protection of the laws.

Seventh. That it is provided in and by said Act No. 49 of the Public Acts of the State of Michigan for the year 1909, aforesaid, as follows:

"The tax so extended against said companies shall become forthwith a debt from each of said companies to the State, and shall constitute a lien upon all the property of said companies, real, personal and mixed, which lien shall take precedence of all demands, judgments, assignments by warranty deed or otherwise, or decrees against said companies, which lien and debt may be enforced by seiz-
9 ure or sale of said property, or such portion thereof as may be necessary to satisfy the same, as hereinbefore provided."

That your orator is the owner of property adapted to and used by it in its said business constituting complete telephone system, which the defendant claims is subject to seizure and sale under said warrant for the collection of said pretended taxes, which property is of the value of more than Two Thousand Dollars, and that the seizure or sale of said property, or any part thereof, will cause an interruption to the business of your orator, that will cause your orator loss and damage exceeding the sum of Two Thousand Dollars.

That the tax aforesaid has been extended upon said tax roll against the property of your orator; and that said defendant Fuller claims that the tax so extended upon said tax roll against the property of your orator constitutes a debt, under the provisions of said Act No. 49, from your orator to the State of Michigan, and constitutes a lien upon the property of your orator, real, personal and mixed, within the State of Michigan, including the property specifically above described, having precedence over all demands, judgments, assignments by warranty deed or otherwise, or decrees against your orator and that said lien and debt may be by him, the said defendant, enforced by seizure and sale of said property, or such portions thereof as may be necessary to satisfy the

same, at any time hereafter, or by bringing suit therefor. And your orator further shows that the said alleged lien constitutes, by the terms of said Act No. 49, a cloud upon the title of your orator to all of its said property, including its said lands and real estate and applies to every portion thereof; and that said defendant, unless restrained by this court, will proceed forthwith, as your orator is informed and believes, to enforce said alleged tax and said alleged lien against the property of your orator by distress and by seizure and sale of said property, thereby causing your orator irreparable injury; and your orator avers that there is no provision of law in the State of Michigan, or otherwise, by virtue of which your orator might bring an action or institute proceedings against the State of Michigan to recover back moneys which it might pay or which might be collected from it for or on account of said alleged tax.

Eighth. Your orator further shows and alleges that the matter in dispute exceeds the sum of two thousand dollars ($2,000), exclusive of interest and costs; and that your orator has no remedy in the premises by statute or at common law, and can obtain relief only from a court of equity, and that the matter in dispute in this suit and the questions of law arising therefrom arise under the constitution and laws of the United States.

Ninth. Your orator further shows that it is ready and willing to pay when due to said defendant the amount to become due from it under Act No. 179 of the Public Acts of the State of Michigan for the year 1899, as the only tax which in law or in equity is due from it to said State of Michigan; but that said defendant has refused and continues to refuse to accept the same in discharge of your orator's liability for taxes; and your orator is ready and willing to pay the said sum as taxes as this court may direct; and is further ready and willing to pay, and now offers to pay, or to secure the payment of all such sums as taxes to the State of Michigan, to the approval of this court, as the court may lawfully upon final hearing of this cause adjudge.

Wherefore your orator prays:

A. That said defendant may be required to answer this bill of complaint, but not under oath, his answer under oath being hereby expressly waived.

B. That said pretended assessment and tax so made as aforesaid by the said State Board of Assessors may be by the decree of this court adjudged to be wholly without jurisdiction, invalid, illegal and void, and that the same be cancelled and that the cloud cast upon the property of your orator by reason of said pretended assessment and tax and the lien thereby attempted to be created upon its property be removed.

C. That a restraining order be issued forthwith and a temporary injunction be granted pendente lite, and that a permanent injunction be awarded upon a final decree restraining the defendant and such person or persons as may succeed him in office, and his or their clerks, agents, and assistants from proceeding in any manner, under color of the authority assumed to be given by said Act No. 49 of the Public Acts of the State of Michigan for the

year 1909 against your orator or its property, and from collecting or attempting to collect from your orator any part of the money asserted by the defendant, as alleged in this bill, to be due from your orator to the State of Michigan, or any part of the taxes mentioned in this bill until the further order of this court.

D. That process in proper form may issue from this honorable court requiring the said defendant to appear and answer this complaint, and to stand to and abide by any decree that may be rendered herein.

E. That your orator may have such other or further relief in the premises as to this court may seem just.

And your orator will ever pray.

CITIZENS TELEPHONE COMPANY,
OF JACKSON,
By ERNEST B. FISHER, *Secretary.*

KLEINHAUS & KNAPPEN,
Solicitors.

Business address 317 Mich. Trust Bldg., Grand Rapids, Mich.

HENRY M. CAMPBELL,
Of Counsel.

Business address: Union Trust Bldg., Detroit, Mich.

11 STATE OF MICHIGAN,
County of Kent, ss:

Ernest B. Fisher, being duly sworn deposes and says that he is the secretary of the Citizens Telephone Company, of Jackson; that he has read said bill of complaint by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

ERNEST B. FISHER.

Subscribed and sworn to before me this 10" day of May, 1910.
[NOTARIAL SEAL.] DORA B. PARKER,
Notary Public, Kent County, Michigan.

My commission expires Feb. 15, 1914.

I acknowledge myself security for all costs for which the complainant may become liable in this suit.

ERNEST B. FISHER.

12 [Endorsed:] United States of America. Circuit Court of the United States. For the Western District of Michigan, Southern Division. In equity. Citizens Telephone Co. of Jackson, complainant, vs. Oramel B. Fuller, Auditor General of the State of Michigan, defendant. Bill of Complaint. Kleinhaus & Knappen, solicitors for complainant. Henry M. Campbell, of counsel. Filed May 10, 1910, at 2:15 P. M. Chas. L. Fitch, clerk.

13 Original.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division.

No. 1700.

In Equity.

CITIZENS TELEPHONE CO. OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

Motion for Injunction and Restraining Order and Notice.

Kleinhans & Knappen, Solicitors for Complainant.
Henry M. Campbell, of Counsel.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division.

In Equity.

No. 1700.

CITIZENS TELEPHONE CO. OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

And now comes the Citizens Telephone Company of Jackson, the complainant in the above entitled cause, and moves this honorable court that a temporary injunction issue from this court directed to Oramel B. Fuller, Auditor-General of the State of Michigan, defendant in this cause, as prayed for in the bill of complaint filed herein, and that pending the hearing of this motion an order may be made by this court restraining said defendant from in any way proceeding to collect or attempting to collect the taxes alleged to be due from said complainant to said State of Michigan, as set forth in said bill of complaint. This motion is based upon the files and records of this cause.

Dated May 10, A. D. 1910.

KLEINHANS & KNAPPEN,
Solicitors for Complainant.

HENRY M. CAMPBELL,
Of Counsel.

Filed May 10, 1910. Chas L. Fitch, Clerk.

14 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division.

In Equity.

At a session of the Circuit Court of the United States for the Western District of Michigan, Southern Division, in Equity, continued and held at the City of Grand Rapids, on the 12th day of May, in the year of our Lord, one thousand nine hundred and ten, and of the independence of the United States the one hundred and thirty-fourth.

Present: The Honorable Henry H. Swan, District Judge by designation.

Among the proceedings then and there had were the following, to-wit:

No. 1700.

CITIZENS TELEPHONE CO. OF JACKSON, Complainant,

vs.

ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

On reading and filing the bill of complaint of Citizens Telephone Company of Jackson against Oramel B. Fuller, Auditor General of the State of Michigan, praying, among other things, that the said defendant, Oramel B. Fuller, and such person or persons as may succeed him in office, and his or their clerks, agents and assistants, be restrained from proceeding, in any manner, under color of the authority assumed to be given by Act No. 49 of the Public Acts of the State of Michigan for the year 1909, and from collecting from said complainant herein the several sums of money demanded by the said defendant from said complainant herein, as set forth in the said bill of complaint, or any part thereof, until the further order of the court, and

Upon motion of Kleinhans & Knappen, solicitors for said complainant, it is ordered that the said defendant, Oramel B. Fuller, and such person or persons as may succeed him in office, and his and their clerks, agents and assistants, wholly desist and refrain from proceeding in any manner under color of the authority assumed to be given by said Act No. 49 of the Public Acts of the State of Michigan of 1909, and from collecting, or attempting to collect from said complainant any part of the moneys as-
15 serted by the said defendant, as alleged in the said bill, to be due the said complainant to the State of Michigan, or any part of the taxes mentioned in said bill, and attempted to be levied upon the property of said complainant under said Public

Act No. 49 of the year 1909, until the determination of the motion for a temporary injunction at this time made, and until the further order of the Court,

And it is further ordered that said motion for a temporary injunction be heard upon Thursday, May 19th, 1910, at 9:30 A. M. at U. S. Circuit Court Rooms, Grand Rapids, and that a copy of the bill of complaint, of said motion and of this order be served upon the defendant five days before the time fixed for hearing of said motion.

HENRY H. SWAN,
United States District Judge, Sitting by Designation.

STATE OF MICHIGAN,
County of Kent, ss:

Thomas A. McCarthy, being duly sworn, deposes and says, that on the 13th day of May, A. D. 1910, he served a certified copy of the foregoing Order to Show Cause and Temporary Restraining Order on Oramel B. Fuller, Auditor General of the State of Michigan, at Lansing, Michigan, by personally delivering the same to the said Oramel B. Fuller, Auditor General, as aforesaid, together with a true copy of the Motion for Injunction and Notice hereto attached; and that at the same time and place he personally delivered to the said Oramel B. Fuller, Auditor General, as aforesaid, a true copy of the bill of complaint filed in the cause named in the annexed order.

THOMAS A. McCARTHY.

Subscribed and sworn to before me this 14th day of May, A. D. 1910.

WM. K. CLUTE,
Notary Public, Kent Co., Michigan.

Com. Exp. Apr. 16/14.

Filed May 14, 1910. Leolyn O. Tenhopen, Dep. Clerk.

16 UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division.

In Equity.

No. —.

CITIZENS TELEPHONE CO. OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

To Hon. Oramel B. Fuller, Auditor General of the State of Michigan.

SIR: You will please take notice that upon the filing of the bill of complaint herein a motion for a temporary injunction in accordance with the prayer of the bill was duly entered.

You will further take notice that served upon you herewith are a copy of the bill of complaint herein filed, the motion for temporary injunction and certified copy of the order of said court fixing the time for hearing of said motion and restraining the defendant in said cause from in any way proceeding to attempt to collect said tax pending the hearing and decision of said motion for a temporary injunction.

Dated May 10, A. D. 1910.

KLEINHANS & KNAPPEN,
Solicitors for Complainant.

HENRY M. CAMPBELL,
Of Counsel.

[Endorsed:] United States of America. Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity. Citizens Telephone Co. of Jackson, Complainant, vs. Oramel B. Fuller, Auditor General of the State of Michigan, Defendant. Motion for Injunction and Restraining Order and Notice. Kleinhans & Knappen, Solicitors for Complainant, Henry M. Campbell, of Counsel.

17 March Term, A. D. 1910. Thursday, May 12, 1910.

The Court met pursuant to adjournment.
Present: The Honorable Henry H. Swan, District Judge.

No. 1700.

CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

On reading and filing the bill of complaint of Citizens Telephone Company of Jackson against Oramel B. Fuller, Auditor General of the State of Michigan, praying, among other things, that the said defendant, Oramel B. Fuller, and such person or persons as may succeed him in office, and his or their clerks, agents and assistants, be restrained from proceeding, in any manner, under color of the authority assumed to be given by Act No. 49 of the Public Acts of the State of Michigan for the year 1909, and from collecting from said complainant herein the several sums of money demanded by the said defendant from said complainant herein, as set forth in the said bill of complaint, or any part thereof, until the further order of the Court, and

Upon motion of Kleinhans & Knappen, solicitors for said complainant, it is ordered that the said defendant, Oramel B. Fuller, and such person or persons as may succeed him in office, and his and their clerks, agents and assistants, wholly desist and refrain from proceeding in any manner under color of the authority assumed to be given by said Act No. 49 of the Public Acts of the State of Michigan of 1909, and from collecting or attempting to collect from said complainant any part of the moneys asserted by the said defendant, as alleged in the said bill, to be due from the said complainant to the State of Michigan, or any part of the taxes mentioned in said bill, and attempted to be levied upon the property of said complainant under said Public Act No. 49 of the year 1909, until the determination of the motion for a temporary injunction at this time
18 made, and until the further order of the Court.

And it is further ordered that said motion for a temporary injunction be heard upon Thursday, May 19th, 1910, at 9:30 A. M. at U. S. Circuit Court Rooms, at Grand Rapids, and that a copy of the bill of complaint, of said motion and of this order be served upon the defendant five days before the time fixed for hearing of said motion.

19 March Term, A. D. 1910. Thursday, May 19, 1910.

The Court met pursuant to adjournment.
Present: The Honorable Arthur C. Denison, District Judge.

No. 1700.

CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

This cause coming duly on for hearing upon the order to show cause heretofore entered herein, by consent in open Court of Jacob Kleinhans, Esq., of counsel for said complainant, and John E. Bird, Esq., of counsel for said defendant, it is ordered that such hearing be and hereby is continued to the tenth day of June, A. D. 1910.

20 No. 1700.

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS TELEPHONE CO. OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Defendant.

Demurrer.

Jno. E. Bird, for Defendant.
Filed May 31, 1910. Chas. L. Fitch, Clerk.

21–23 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS TELEPHONE CO. OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Defendant.

This defendant, Oramel B. Fuller, (appearing without intent or purpose to represent or bind the State but with express purpose and intention, not to submit the State to the jurisdiction of the court or to bind it by any decree which may be entered herein), by protestation, not confessing or acknowledging all or any of the matters or things, in the bill of complaint contained, to be true in the manner or form, as the same are therein set forth, demurs to the said bill, and for cause of demurrer shows:

(1) That the said complainant has not, in and by its said bill, made or stated such a case as entitles it, in a court of equity, or in this court, to any relief from or against this defendant, touching the matters contained therein.

(2) That the act complained of, and under which the assessments attacked in the bill, were made, is valid and constitutional.

(3) That no case within the jurisdiction of this court, is stated.

(4) That the said complainant is not entitled to maintain its said bill, in that it has full, complete and adequate remedy at law.

(5) That no injury to the complainant or to its property by reason of the alleged defect in, or fault of, classification claimed in the bill, appears or is set forth therein.

Wherefore, this defendant demurs to the said bill and prays judgment whether he shall be compelled to make further or other answer thereto, and to be dismissed with his reasonable costs in this behalf sustained.

JNO. E. BIRD,
FRANZ KUHN,
ROGER I. WYKES,
GEORGE S. LAW,
Solicitors and of Counsel for Defendant.

In my opinion this demurrer is well founded in point of law, and proper to be filed in said cause.

ROGER I. WYKES,
Of Counsel for Defendant.

UNITED STATES OF AMERICA,
Eastern District of Michigan,
County of Ingham, ss:

Oramel B Fuller, the defendant herein, upon oath says: that he has read the foregoing demurrer and that the same is not interposed for the purpose of delaying said suit or other proceedings therein.

ORAMEL B. FULLER.

Subscribed and sworn to before me this 28th day of May, 1910.

C. K. WOODHOUSE,
Notary Public, Ingham County, Mich.

My commission expires Feb. 25, 1913.

24

Chancery Subpœna.

UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, ss:

The President of the United States of America, to Oramel B. Fuller, Auditor General of the State of Michigan, Defendant, Greeting:

We command you and every of you, that you appear before our Judges of our Circuit Court of the United States of America, for the Western District of Michigan, at Grand Rapids, in said District, on

the first Monday in the Month of June next, to answer the bill of complaint of Citizens' Telephone Company of Jackson, Complainant, this day filed in the Clerk's office of said Court, in said City of Grand Rapids, then and there to receive and abide by such judgment and decree, as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the Marshall of the Western District of Michigan to Execute.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Grand Rapids, aforesaid, this 10th day of May in the year of our Lord one thousand nine hundred and ten.

[Seal of the U. S. Circuit Court for the Western District of Michigan, Southern Division.]

CHARLES L. FITCH, *Clerk,*
By —— ——, *Deputy.*

Memorandum.

The within named defendant is notified that unless he enters his appearance in the Clerk's office of said Court, at Grand Rapids, aforesaid, on or before the day to which the within writ is returnable, the bill of complaint will be taken against him as confessed, and a decree entered accordingly.

CHARLES L. FITCH, *Clerk.*
By —— ——, *Deputy.*

24½ WESTERN DISTRICT OF MICHIGAN,
Northern Division, ss:

I Hereby Certify and Return that after diligent search and inquiry I am unable to find Oramel B. Fuller, Defendant within named or any member or resident of the family of the defendant herein named within my bailiwick.

FRANK W. WAIT, *U. S. Marshal,*
By E. D. MOSHER, *Deputy.*

[Endorsed:] Marshal's Docket No. 1040. No. 1700. Circuit Court of the United States, Western District of Michigan, Southern Division. Citizens' Telephone Company of Jackson, Complainant, vs. Oramel B. Fuller, Auditor General, Defendant. Chancery Subpoena. Returnable to rule day first Monday in June A. D. 1910. Filed June 6 A. D. 1910. Chas. L. Fitch, Clerk. Kleinhans & Knappen. Henry M. Campbell, Compt's Sol'r.

To the Marshal:

The Marshal will serve this Subpœna and Notice for a Writ of Injunction, personally, upon each of the defendants, or in case any of them cannot be found, then serve on such by leaving a copy thereof at the dwelling house or usual place of abode of such defendant, with some adult person who is a member or resident of the family, of suitable age and discretion.

——— ———, *Complt's Sol'r.*

25 March Term, A. D. 1910. Friday, June 10, 1910.

The Court met pursuant to adjournment.
Present the Honorable Arthur C. Denison, District Judge.

No. 1700.

CITIZENS TELEPHONE COMPANY, of Jackson, Complainant,
vs.
ORAMEL B. FULLER. Auditor General of the State of Michigan, Defendant.

By consent of counsel for the respective parties, it is ordered that the hearing upon the order to show cause herein be and hereby is continued until the eleventh day of June, instant, at 9:30 A. M.

26 March Term, A. D. 1910. Saturday, June 11, 1910.

The Court met pursuant to adjournment.
Present the Honorable Arthur C. Denison, District Judge.

No. 1700.

CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

This cause having come on for hearing on the bill and demurrer therein and having been argued by counsel, and the Court not being prepared to decide the questions involved at the present time; it is ordered that the restraining order heretofore made herein be and it hereby is continued in force until the further order of the Court, on condition that the Complainant, on or before July 1, 1910, pay to the Auditor General three per cent of its gross receipts for the year ending December 31, 1909; such payment to be without prejudice to the rights of the parties; and if it shall be held that the tax in controversy in this cause is valid, then such payment to apply thereon.

27 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE TELEPHONE TAX CASES.

The demurrers in these cases were orally argued, on June 11th, but counsel required further time for the submission of briefs, and such submission was not finished until after the commencement of the Marquette term, which has been in continuous session until within the last few days.

I have gone far enough into the examination of the main ques-
murrer. It is apparent that the legislation attacked did make a dis-
murrer. It is apparrent that the legislation attacked did make a dis-
crimination against the complainants and in favor of other tele-
phone companies. The substantial question on which these cases
will turn must be whether such discrimination was, as complainants
claim "unreasonable and arbitrary", or whether it was, as the At-
torney General claims, merely the exercise of a reasonable scheme
of classification. Properly to determine this question, the court
should be informed whether the property of the companies favored
was trifling and inconsiderable as compared with the property of
the companies taxed, or whether, on the other hand, the property
exempted was of very large amount; and should also be informed
what all the facts were which either justified or forbade the so-called
classification. Not all the facts on this subject appear by the plead-
ings, in their present state, and any attempt to decide the meritori-
ous question, while the record is in that condition, would be un-
fortunate. If, for example, it is true, as said on the argument, that
the distinction made is really, when applied to the known facts, a
distinction between co-operative companies and those organized for
profit, that fact might or might not ultimately be thought important,
but the case ought not to stand on a record not showing such
fact.

28 It is said that the burden is on the complainants to show,
by their bills of complaint, the absence of all things which
could justify the discrimination, and that complainants' allegation
that the discrimination was wholly arbitrary is only the statement
of a conclusion, and that the bills are, therefore, fatally defective.
If this was so, it would mean only that complainants should be per-
mitted to amend; but it seems to me that, under the circumstances
here existing, when the complainants allege that there was discrim-
ination in fact in favor of "corporations, companies and persons
carrying on the telephone business under the same conditions" as
those under which complainants transact their business, and that
such discrimination is arbitrary and "merely and solely because of
the amount of the business done" and that the "exemption is based
upon no reasonable ground and affords no reasonable basis of classi-
fication", they have stated sufficient facts, as distinguished from
conclusions, to entitle them to make proof, if they can, that these
facts are true.

The remedy at law, by payment and suit to recover, is not so
adequate and complete as to bar relief in equity. The right to an
injunction against the collection of a state tax, if imposed under
unconstitutional law, was recognized in the Michigan Railroad
Tax Cases (138 Fed. Rep., 229; 201 U. S. 245). The alleged
grounds of unconstitutionality, in the present case, are not so obvi-
ous, but are rather so far dependent upon a consideration of the
facts and circumstances, that the decisions denying an injunction
against a plainly unconstitutional tax do not apply.

The amount involved in each case is, at most, the amount of the
tax imposed and about to be enforced. The right to tax, under an-

other law, is conceded; the only complaint is that the state is proceeding under an invalid law, to collect a tax which exceeds the amount of the real and valid tax. There can be no presumption that if the law is unconstitutional, the state will proceed to enforce it in future years. I think the case calls for the application of the rule that jurisdiction is determined by the amount of the tax,
29 and not by the value of the property taxed. There are no special circumstances of injury or irreparable damage, as sometimes found. If this Court must hear a controversy over a tax of nineteen hundred dollars, it must hear one over nineteen dollars:

Walker v. Northeastern, 147 U. S., 370;
Fishback v. W. U. Tel. Co., 161 U. S., 96;
Ogden v. Armstrong, 168 U. S., 232;
Holt v. Indiana Co., 176 U. S., 72.

It follows that the demurrer must be sustained in the three cases where the tax is less than two thousand dollars (Nos. 1,698, 1,699 and 1,701) and overruled in the other four cases.

The injunctional order has been modified so that it requires complainants to pay the full tax assessable under the old law. With this modification, it should stand, in the four cases, until the hearing; but the matter is of much public importance, the proofs will be simple and short, and a final hearing can be had very speedily, if the state wishes. As a condition of maintaining the injunctional order, it will be directed that complainants file their replications immediately upon the filing of the answers, and that, thereupon, complainants take their prima facie proofs within fifteen days; that the state take its proofs within fifteen days thereafter; that the complainants take their proofs in reply within ten days thereafter; and that the case then stand for final hearing without notice; and it will be understood that such hearing will have precedence over the ordinary business of the court and of counsel.

Dated August 11th, 1910.

ARTHUR C. DENISON,
District Judge.

[Endorsement:] The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity. Citizens Telephone Co. vs. Auditor General and Six Other Telephone Tax Cases. Opinion on demurrer. Filed Aug. 11, 1910. Chas. L. Fitch, clerk.

30 March Term, A. D. 1910. Thursday, August 11, 1910.

The Court met pursuant to adjournment.
Present the Honorable Arthur C. Denison, District Judge.

No. 1700.

CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

This cause having been heretofore duly argued and submitted by counsel for the respective parties upon the demurrer to the said complainant's bill of complaint; after due consideration of the premises, it is ordered by the Court that said demurrer be and the same hereby is overruled; and that the said defendant have leave to answer the said bill of complaint on or before the next rule day.

And it is further ordered that the restraining order heretofore made in this cause, as modified by the order entered herein June eleventh, A. D. 1910, shall continue in full force and effect until the final hearing and determination of this cause, or until the further order of the Court in that behalf, provided that the complainant join in speeding the cause as follows, viz: upon the filing of the answer to said bill of complaint said complainant shall forthwith file its replication thereto; thereupon said complainant shall take its prima facie proofs within fifteen days after the filing of such replication; the said defendant shall take the testimony on its part within the next succeeding fifteen days; the complainant shall take its rebuttal proofs, if any, within the next succeeding ten days; and upon the expiration of said last named period, the proofs shall be closed, and, without further order of the Court or notice by the parties this case shall stand for immediate hearing upon pleadings and proofs

31 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

Number 1700.

CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Defendant.

Answer.

The defendant Oramel B. Fuller, without purpose or intent to waive the demurrer heretofore interposed or to represent or bind the

State of Michigan or make it a party to this litigation, for answer to the bill of complaint heretofore filed herein, respectfully shows:—

1. That he admits the allegations of the first paragraph of said bill except that he has no knowledge or information that the complainant is the owner of an interstate line or does business of an interstate character, or that the business of the complainant is constantly increasing, and makes no admission with regard thereto.

2. That he admits the allegations of paragraph second of said bill to be substantially true as therein set forth.

3. That he admits the allegations of paragraph numbered third of said bill to be substantially true as therein set forth.

4. That he admits the allegations of paragraph fourth of said bill to be substantially true.

5. That he admits that as stated in paragraph fifth of said bill that section four of Act No. 49 of the Public Acts of Michigan of 1909 contains the proviso that the property of the telegraph and telephone companies whose gross receipts within the State of Michigan for the year ending June 30th preceding each and every assessment do not exceed the sum of five hundred dollars, shall be exempt from taxation by the said State of Michigan, but that he is not clear as to whether the effect of the said proviso is to exempt such property of telegraph and telephone companies from all taxation, or whether the exemption is limited to taxation through and by the state board of assessors whose duties are fixed by said Act No. 49 of the Public Acts of 1909.

That he denies the remainder of said paragraph fifth of said bill.

That further answering said paragraph, this defendant says
32 that the exemption of such telephone companies whose gross receipts within Michigan do not exceed the sum of five hundred dollars for the year ending June 30th, in each year is not an unlawful, unreasonable or arbitrary discrimination against the complainant or against other telephone companies whose gross annual earnings exceed the sum of five hundred dollars per year; but that the said exemption is reasonable and proper and valid and is based upon sufficient differences in principle which bear a just and reasonable relation to the purposes for which the classification is made.

6. That he denies the allegations of paragraph numbered sixth of said bill, except that he admits that Section 21 of Article V of the Michigan Constitution provides that no law shall embrace more than one object which shall be expressed in its title; and that the purpose of said provision is to inform both the Legislature and People of the State of the character of pending legislation and that prior to the passage of Act No. 49 of 1909, the property of certain specified classes of corporations other than telephone companies were taxed under the provisions of Act 282 of the Public Acts of 1905, and he admits that the title to said Act 49 of 1909 is correctly set forth in said paragraph of said bill.

7. That he admits the allegations of paragraph seventh of said bill, except that he has no knowledge of the location, description or value of the property claimed to belong to the complainant and referred to therein, and makes no admission with regard thereto, but

leaves the complainant to its proofs thereon; and that he denies that the seizure or sale of the property of said complainant, or any part thereof, will cause an interruption to the business of said complainant, or that it will cause said complainant any loss or damage whatever; and that he denies that there is no provision of law in the State of Michigan or otherwise by virtue of which complainant might bring an action or institute proceedings against the State of Michigan to recover back moneys which it might pay or which might be collected from it for or on account of the said tax assessed against it; and avers that under the law of the State of Michigan, the said complainant has full, complete and adequate remedy at law by the payment of its tax under protest and the institution of a suit against the collecting officer to recover the amount paid.

8. That he admits that the value of the matter in dispute
33 exceeds two thousand dollars, but denies the remaining allegations of paragraph numbered eight of said bill.

9. That he admits that complainant is ready and willing to pay the amount which has become due from it under Act 179 of the Public Acts of Michigan, of 1899, and that the complainant has already paid the same and admits that this defendant has refused to accept and still continues to refuse to accept the same in full discharge of said complainant's liability for taxes. That as to whether said complainant is ready and willing to pay or secure the payment of any further tax, he has no knowledge or information and makes no admission with regard thereto.

10. This defendant further answering said bill avers that said act No. 49 of the Public Acts of Michigan of 1909 and the action and proceedings of the State Board of Assessors thereunder and the assessment made and taxes levied pursuant thereto are in all respects valid and legal and constitutional, that the classification therein made of the companies whose property is taxed under, and those whose property is exempted from the operation of, the said act, is reasonable and proper and is based upon such differences in principle as bear a just and reasonable relation to the taxation of the property of telegraph and telephone companies, among which differences (there being no intent by this enumeration to limit claims of difference) are the following:

(*a*) That the property and operations of those telephone companies which are subject to taxation under the provisions of said act are radically different from those of the telephone companies exempted from the operations of said act.

(*b*) That the property of those telephone companies subject to taxation under the provisions of said act is not employed in the same business in the same manner as is the property of those telephone companies exempted from the operations of said act.

11. That the purpose of all taxation is to produce a revenue; that the property of those telephone companies exempted from the operations of said Act 49 of 1909 was severally and in the aggregate of but inconsiderable value, the value of the property belonging to each company being very small and so small, as, if taxed at the average rate levied upon other property, not to produce a sufficient return

to pay the expense of making the assessment and collection of the tax.

34 Wherefore, this defendant, claiming the benefit of the points in its demurrer heretofore made, in addition to this answer, prays that he may be dismissed with his reasonable costs and charges in this behalf sustained.

ORAMEL B. FULLER.

FRANZ C. KUHN,
ROGER I. WYKES,
GEO. S. LAW,
Solicitors for Defendant.

[Endorsed:] No. 1700. United States of America. Circuit Court of the United States for the Western District of Michigan, Southern Division. In Chancery. Citizens Telephone Company of Jackson, Complainant, vs. Oramel B. Fuller, Defendant. Answer. Filed Aug. 22, 1910. Chas. L. Fitch, Clerk. Franz C. Kuhn, Roger I. Wykes, George S. Law, Solicitors for Defendant.

35 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

No. 1700.

CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Defendant.

This replicant, Citizens Telephone Company of Jackson, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant Oramel B. Fuller, for replication thereunto saith that it doth and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

KLEINHANS & KNAPPEN,
Solicitors for Complainant.

HENRY M. CAMPBELL,
Of Counsel.

[Endorsed:] No. 1700. U. S. Circuit Court. West. Dist. Mich. So. Div. In Equity. Citizens Telephone Co. of Jackson, Complainant, vs. Oramel B. Fuller, Defendant. Replication. Filed Aug. 22, 1910. Chas. L. Fitch, Clerk. Kleinhans & Knappen, Sol'rs for Compl't. Henry M. Campbell, of Counsel.

36 October Term, A. D. 1910, Thursday, December 29, 1910.

The Court met pursuant to adjournment.
Present the Honorable Arthur C. Denison, District Judge.

No. 1700.

CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

This cause coming duly on for hearing upon pleadings and proofs was argued and submitted by counsel for the respective parties, and thereupon the Court took this cause under advisement.

37 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

THE MICHIGAN TELEPHONE TAX CASES.

For the Complainants:

Henry M. Campbell.
Jacob Kleinhans.
Leo M. Butzel.

For the Auditor General, defendant:

Franz Kuhn, Attorney General.
George S. Law, Assistant Attorney General.
Roger I. Wykes, Special Counsel.

Prior to 1901, Michigan railroad, telegraph and telephone companies were taxed specifically upon their earnings. These taxes were assessed and collected under various acts. That concerning telephone and telegraph companies was act 179 of 1899. It prescribed a tax of three per cent. of the gross receipts. In 1901, following political agitation on the subject, the legislature provided a plan for transferring railroads from the specific to the ad valorem basis. It created a State Board of Assessors, which was to assess the railroads' property at its true cash value, ascertain the average rate of taxes throughout the state and then levy this average rate against the amount of the assessment. The validity of this legislation was upheld in this court by Judge Wanty (Michigan Railroad Tax Cases, 138 Fed. Rep., 223), and his decree was upheld by the Supreme Court (201 U. S., 245).

Thereafter, and by act 49 of 1909, telephone and telegraph companies were also transferred to the ad valorem basis, and put in the same class with railroad companies, subject to assessment by the State Board of Assessors. The act (§4) provided for the assessment "of the property by whomsoever owned, operated or conducted * * * of * * * telegraph companies, telephone companies, etc.," but carried the following proviso:

"Provided, that the property of telegraph and telephone companies whose gross receipts within this state for the year ending June 30th do not exceed five hundred dollars, shall be exempt from taxation."

Pursuant to this act, the State Board assessed the property
38 of the four complainant companies at the aggregate sum of about $14,500,000.00, and levied thereon a total tax of about $300,000.00. A tax under the former three per cent. specific basis would have been about $130,000.00 so that the new law effected a $170,000.00 increase. They filed their several bills against the Auditor General to prevent the enforcement of the new tax. A preliminary injunction was granted and continued, on condition that the companies pay the tax accruing under the old law so that only the excess would be affected by the injunction. With this condition, they have complied.

The bills allege that the proviso of §4 causes discrimination and taking of property in violation of the "due process" and "equal protection" clauses of the fourteenth amendment to the federal constitution; and further allege that the act is invalid for deficiency of title under the Michigan constitution (Art. V., §21).

Upon the argument of a demurrer, it was thought that some of the general terms of the bill, in its allegations of lack of cause for discrimination, might be sufficient to admit evidence operating to define these general terms, and the demurrer was overruled. Full proofs have now been taken and the following facts, which may bear upon the existence of forbidden discrimination, are established:

For the year ending June 30th, 1909, 659 corporations, individuals or associations made the required report. Of these, 224 showed receipts of more than $500 each, reported property said to have cost $35,000,000.00 and reported gross receipts of $7,600,000.00. The Board assessed this property at $21,000,000.00 and levied thereon a total tax of $433,000.00 (in place of the former specific tax, which would have been $228,000.00). Four hundred and thirty-five of the reports showed receipts of less than $500.00 each. Property belonging to the persons and companies so reporting was not assessed. The cost of this non-assessed property, at the average reported cost per telephone of all reporting companies, would be about $145,000.00; complainants' proof tends to show such cost to be about $250,000.00; $200,000.00 may fairly be assumed as such cost; and upon the comparative basis used with the larger corporations, this exempted property would have been assessed at $120,000.00. If we add an ample allowance for non-reporting, non-taxable property, it still appears that the property which escaped tax-

ation and which forms the basis of the complaint, is not more than one per cent. of the total.

39 The great part of all the taxed property belonging to commercial corporations or enterprises organized and conducted for the purpose of earning and paying profits as or in the nature of dividends; substantially all that untaxed was the property of co-operative or farmers' mutual associations, usually unincorporated, conducted at estimated costs, and organized primarily to get for the associates cheap telephone service.

In the composition of the first or taxed class, there are exceptions to the description just stated, and there are to be found some conducted-at-cost enterprises. The proof does not show how many. If the extent of such enterprises is important in order to establish discriminations, then complainants' proof fails in this respect. It is, however, a safe assumption, from inspection of the list, that more than ninety-eight per cent of the property assessed represents commercial investments adapted and intended to earn interest or dividends.

In the composition of the second or exempt class, there are also exceptions to the stated formula. Out of the 435, there are 58 as to the character of which complainants raise this question. As to many of the 58, there is a lack of any substantial proof; as to some, classification on this basis is difficult, because they include elements characteristic of each class; but, excluding those which were new in 1909 and will be taxed in 1910, a conclusion that the property of the commercial investment class, which would escape taxation because of its small income, cost $75,000.00, resulting in an assessment valuation of $45,000.00, gives complainant the benefit of every doubt. This is less than one-fourth of one per cent. of the assessment.

These figures, compiled from the reports for the year ending June 30th, 1909, are subject to variations on account of property then not reported and so omitted, and also on account of property later devoted to such uses. Developments in the regular course of business and the research of parties brought to light, before the evidence closed, about 90 additional enterprises which had not reported. These do not materially vary the proportions given, and it is clear that the unobserved and undiscovered telephone systems must be almost wholly of the small, roadway class. There is no reason to suppose that the future, regular development of the business will change the existing proportions.

40 There has been, for some years, a continuing absorption by the larger companies of the small ones, and it is a frequent occurrence for a co-operative, non-profit-making company, having gross annual earnings of less than $500.00, to sell its property to one of the larger companies having a large income. It follows, as an undoubted fact, that the identical property, devoted continuously to substantially similar use, may, from year to year, shift between taxable and non-taxable class, solely on account of the ownership of the property.

DENISON, *District Judge* (after stating facts as above):

In the view I have taken of the controlling questions, it is not important to state in greater detail the questions of fact or of law that are presented by the record, or to make a more complete finding of facts.

The defendant insists that complainants have an adequate remedy at law. I think not. They own real estate. This tax constitutes a lien upon their real estate and a cloud thereon, and so they have a prima facie right to resort to a court of equity for the removal of the cloud. Even so, if they have another completely adequate remedy, by paying the tax under protest, and suing at law for its recovery, such prima facie jurisdiction might be destroyed. Although the state cannot, without statutory permission, be sued to recover a void tax, yet it is the settled rule of Michigan, that the collecting officer is personally liable for such tax, even though he has paid it into the state treasury (Bank vs. Watkins, 21 Mich., 488; Thompson vs. Detroit, 114 Mich., 502). To make such remedy "adequate" in this case, it must be assumed that judgments aggregating, for one year, $202,000.00 (and a much larger sum to accrue pending a final decision) could be collected from the individual who may be now filling some state office. I cannot indulge such an assumption, for the sake of defeating jurisdiction; but complainants may, if they wish, amend by alleging defendant's pecuniary irresponsibility for the amounts involved.

Defendant also insists that complainants suffer no harm from the alleged discrimination, and so have no equity to complain. This objection is taken because all the proceeds of this tax go, specifically, to the primary school fund, and do not operate, directly or indirectly, to reduce the tax burden of telephone companies; in other words, complainants' tax would not be a dollar less, if the total of property taxed in this class was twice as much as it is. The
41 point is based upon the further ground that a complaint of this character should not receive consideration, unless it is made by some company which finds itself in the taxed class, when, upon the only sustainable basis of classification, it should be in the untaxed class. There is plausibility in this argument but it seems to lead to the conclusion that complainants must submit to any discrimination, no matter how arbitrary or how unjustifiable, if the discrimination does not increase their tax. The forbidden discrimination may be found as well in a bestowal of unfair favor as in the imposition of an unjust burden.

"Such equal protection is denied when, upon one of two parties engaged in the same kind of business and under the same conditions, burdens are cast which are not cast upon the other (Cotting v. Kansas City Stock Yards, 183 U. S., 79, 112).

In deciding whether state legislation transgresses constitutional limitations, it is to be remembered that an affirmative decision can be predicated only upon a case "so clearly and palpably a legal encroachment upon private rights as to leave no doubt that such taxation, by its necessary operation, is really spoliation under the guise of exercising the power to tax"; and that "all doubt as to the validity

of legislative enactments must be solved, if possible, in favor of the binding force of such enactments" (Henderson Bridge Co. v. Henderson City, 173 U. S., 592, 615). It must also be remembered that all arguments against the law because of its alleged unfairness and injustice were for the legislature; and no such argument can now be considered by this court, unless the injustice is so extreme as to impair a constitutional right.

It would not be profitable to review the Supreme Court decisions on the subject of classification; reference to this line of decisions will be found in the four most recent opinions, one in 216 U. S. (Southern Ry. v. Green, 400, 417) and three in 217 U. S. (Southwestern Oil Co. v. Texas, 114, 122; Standard Oil Co. v. Tennessee, 413, 420; and Brown-Forman Co. v. Kentucky, 563, 572). The clear rule is that classification is not arbitrary and invalid if it is "based upon some difference which bears a reasonable and just relation to the attempted classification" (Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 560).

Nor is it necessary to inquire whether, as defendant argues, the right is broader in matters of taxation than in matters of
42 police power. It is at least as broad, and complainants cannot object if we accept the criteria established in the police power cases. Indeed, the underlying question seems to be the same (Brown-Forman Co. v. Kentucky, Supra, at page 571). Nor need we consider whether the small companies are wholly exempt from all taxation, or remain subject to specific taxes under the old law. When they are hereafter spoken of as exempt, it is intended to say that they are exempt at least under this act.

So, too, I think that a determination whether, when taxes are levied upon an ad valorem and not upon a specific basis, the amount of annual earnings, gross or net, may, of itself, constitute a sufficient basis for rendering property taxable or non-taxable, is not necessary, in a case where other distinctions exist which are more satisfactory than the mere amount of earnings.

Is there, then, in this case, any difference, beyond the respective earnings, between the property taxed and the property untaxed, which difference bears any reasonable relation to the classifying acts of the assessing board? Disregarding for the moment the exceptional instances, we find (1) that the property exempted is only a trifling portion of the whole; (2) that the cost of assessing and collecting in this class would be disproportionate to the amount which would be realized; (3) that this property is in the incipient or development stage, while the taxed property is in the fully developed form; (4) that the use of the untaxed property is predominantly private, while the use of the taxed property is correspondingly public; and (5) that the exempted property is used for the personal convenience and economy of the owners, while the taxed property represents commercial investments for profit-making purposes. It seems to me clear that these distinctions, and especially the last named, fully justify a classification resting on that basis, and justify taxing the public use profit-earning property, while exempting the private use, co-operative property (King v. Mullins,

171 U. S., 404, 435; Magoon v. Illinois Bank, 170 U. S., 283, 293; St. Louis, etc., Co. v. Illinois, 185 U. S., 203, 207; Seaboard Air Line Ry. v. Seegers, 207 U. S., 73, 76).

Having so concluded that the legislature was entitled to reach and accomplish the result which it did accomplish in the matter of
43 of taxation exemption, the next question must be whether the result will be invalidated because the legislature may have assigned the wrong theory; that is to say, if the legislature is entitled, for any good reason, to exempt from general taxation a class of items, and such exemption results from the due administration of the statute as passed, is the exemption invalid because the legislature, in the statute, declares a non-maintainable reason for the exemption? This question, I am satisfied, should be answered in the negative.

"The validity of the tax can in no way be dependent upon the mode which the state may deem fit to adopt in fixing the amount which it will exact" (Home Ins. Co. v. N. Y., 134 U. S., 594, 600).

"The substance and not the shadow determines the validity of the exercise of the power" (Postal Tel. Co. v. Adams, 155 U. S. 688, 698.)

We are, then, necessarily led to the conclusion that this legislation, which might rightfully have created the resulting exemptions upon the ground that they favored private companies or non-profit-making companies, is not invalid because it describes these companies in terms of earnings instead of in terms of method and use.

This leaves, upon this branch of the case, only the question whether the attempted classification must fail because the declared basis of division will leave some instances of each class upon the wrong side of the line drawn under the true basis. It will tax some small portion of the co-operative companies and will exempt some small portion of the profit-making companies. This question is answered by the Supreme Court in M. J. & K. C. R. v. Turnipseed, (Dec. 19, 1910.) In that case, it was contended that a classification between employees, which, in a general way, was a proper classification, was so formulated by the statute that it accomplished more than the underlying reasons of classification permitted, and exempted employees for whose exemption there was no lawful reason. Mr. Justice Lurton said:

"But this court has never so construed the limitation imposed by the fourteenth amendment upon the power of a state to legislate with reference to particular employments, as to render ineffectual a general classification resting upon obvious principles of public policy because it may happen that the classification includes persons not subject to a uniform degree of danger."

44 Upon the same subject, the same court has already said:

"In a classification for governmental purposes, there cannot be an exact exclusion or inclusion of persons and things" (Magoon v. Illinois Bank, 170 U. S., 283, 296); and also:

"Exceptional and rare cases * * * may be imagined where * * * the people affected by the statute ought, in strictness, to have been included in the exception. But we do not think the statute should be condemned on that account, etc." (Ozan Co. v. Union Bank, 207 U. S., 251, 256).

If this classification is to be sustained, for the reasons stated, it becomes necessary to consider the force of certain incidents which undoubtedly do constitute, in some measure, a discrimination not justified by the adopted theory of classification. The first of these is found in the fact that the same property, continuously owned by the same persons, and devoted to the same use, will, from year to year, shift between the classes, as its earnings vary with reference to the $500.00 mark. This seems to indicate that taxation depends upon mere size; but this relation between size and taxation is really not determinative, but, rather is superficial and incidental. The amount of earnings furnishes a fairly accurate indication whether the company is beyond the incipient stage of profit-making. Mr. Justice Holmes has very recently said (Engel v. O'Malley, Jan. 3, 1911):

"It is true, no doubt, that where size is not an index, * * * the law cannot discriminate between the great and the small. But in this case, size is an index."

The other of these incidents consists in the fact already stated that a mere change of ownership may accomplish a transfer from one class to the other. This result is logically inconsistent with any theoretically permissible classification; and, if it was the only element for consideration, it would demonstrate that the classification was invalid. In this case, however, it seems comparatively negligible and ought not to be permitted to control the situation. The amount of property so shifting from year to year is small and relatively trifling. True, complainants might segregate parts
45 of their property into these small units, and so escape some taxation; but they have not done this, and to do so would, very likely, involve more expense than saving. Legislation is not necessarily invalid just because there is a loop-hole by which an occasional instance may escape an otherwise universal operation. Upon the whole, this incident must be taken as one of those imperfections likely to be found even in well arranged systems of taxation. As said by Mr. Justice Miller in State Railroad Tax Cases, 92 U. S., 575, 612, and repeated by Mr. Justice Brewer in Travelers' Ins. Co. v. Connecticut, 185 U. S., 364, 372:

"Perfect equality and perfect uniformity of taxation, as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized."

It follows from these considerations, that the act of 1909 in question, does not deny to complainants the equal protection of the laws, nor does it take their property without due process of law.

The non-federal question presented by the record, and which must also be decided, is based upon the familiar provision of the Michigan constitution that an act shall embrace but one object which shall be expressed in its title. Omitting unimportant words, and paraphrasing somewhat, Act No. 173 of 1901 is entitled "An Act to provide for the assessment of the property of railroad companies and express companies"; and the act now challenged, No. 49 of 1909, was entitled, "An act to amend the title and certain sections of Act No. 173 of 1901, relating to the taxation of railroads and express companies." The purpose of the act of 1909 was to in-

clude telephone and telegraph companies with railroad and express companies, and this purpose was not, in so many words, expressed in the title.

The Michigan Supreme Court has construed and applied this constitutional provision in a large number of cases. Some of the earlier cases applied the limitation with great strictness, but the later tendency has been to hold that the title is sufficient if it fairly indicates the subject-matter and ought to put on notice those who may be interested in that subject-matter. The exact question here presented has never been decided in Michigan, although it has been held that, in the title of an amending act, a mere reference to the number and general purpose of the act amended is sufficient; but this holding has been in cases where the purpose of the amendment was within the original title of the act:

46

Callahan v. Chipman, 59 Mich. 616;
Att'y Gen. v. Amos, 60 Mich. 375;
People v. Howard, 73 Mich. 14;
Sokup v. Van Dyke, 109 Mich. 681.

The practice employed in this instance has not been uncommon, and counsel have pointed out thirty instances during the last eight sessions where amending statutes have been thus entitled, and where the statute must fail if the present one is invalid.

The title of this act gave clear notice that there was to be made, in the original act, some change which necessitated changing its title, and this was, by necessary implication, notice that it was intended by the amendatory act to reach some kinds of property not named in the title to the original act, or else to withdraw some kind of property which was there named. We have, then, a case where, by the original statute, certain public service corporations were subjected to a given system of taxation and where public notice was given that it was proposed to change the enumeration of corporations included under that system. I think that telephone and telegraph companies are not entitled to complain of any deficiency in this notice, and that it was sufficient to satisfy the theory of the constitution. It is a matter of public, political history that the extension of this taxing system, so as to include telephone and telegraph companies, had been the subject of a contest during the legislative session of 1907, at which the attempted extension failed, and that such extension was specially mentioned and urged in the Governor's message to the legislature of 1909. These well known facts make it improper to resort to any strained construction in order to find surprise or lack of notice.

Decrees may be entered dismissing the bills in the four cases. Dated February 6th, 1911.

ARTHUR C. DENISON,
District Judge.

[Endorsed:] Nos. 1696, 7, 1700, 1702. The Circuit Court of the United States for the Western District of Michigan, Southern Division. In equity. Michigan Telephone Tax Cases. Opinion. Filed Feb. 3, 1911. Chas. L. Fitch, clerk.

47 March Term, A. D. 1911, Monday, March 27, 1911, two o'clock, P. M.

The Court met pursuant to recess taken.

Present the Honorable Henry F. Severens, Circuit Judge, and the Honorable Arthur C. Denison, and the Honorable Henry H. Swan, District Judges.

No. 1700.

THE CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

This cause having been heretofore duly argued and submitted by counsel for the respective parties and having been taken by the Court under advisement; and due deliberation having been thereupon had:

It is ordered, adjudged and decreed that the said complainant's said bill of complaint be and it hereby is dismissed; and it is further ordered, adjudged and decreed that the said defendant do recover against the said complainant his costs in this cause to be taxed; and that the said defendant have execution thereof.

48 March Term, A. D. 1911. Monday, March 27, 1911, two o'clock, P. M.

The Court met pursuant to recess taken.

Present the Honorable Henry F. Severens, Circuit Judge, and the Honorable Arthur C. Denison and the Honorable Henry H. Swan, District Judges.

No. 1700.

THE CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

A decree having been entered in this cause dismissing the bill of complaint therein, and a motion having been made by the complainant to continue the injunction in force pending an appeal to the Supreme Court of the United States, after hearing Mr. Jacob Kleinhans, of counsel for the complainant, and Mr. Roger I. Wykes, appearing as counsel for the Governor and the Attorney General of the State of Michigan, as well as for the defendant; and the District Judge who heard this case having called to his assistance to hear and determine the application, the Honorable Henry F. Severens, Circuit Judge, and the Honorable Henry H. Swan, District Judge for the Eastern District of Michigan, and such application

having been heard and being now determined by said three judges, sitting together;

It is ordered that the injunctional order heretofore made in this cause be and it hereby is restored and continued in force for the term of ten days from this date, and if in the meanwhile an appeal shall be taken by the complainant, such injunction shall be continued in force until the appeal is heard and determined in the Supreme Court of the United States, or until the Supreme Court shall otherwise order; Provided that the Complainant shall execute a bond, with good and sufficient sureties, to be approved by one of the Judges of this Court, in the penal sum of Four Thousand Dollars, on the usual condition, and with the further condition that if the decree in this cause shall be affirmed, the complainant will pay the taxes assessed against it mentioned in the Bill of Complaint, which have not heretofore been paid, together with all interest and penalties thereon.

49 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

The above named Complainant, conceiving itself aggrieved by the decree made and entered on the 27th day of March, in the above entitled cause, does hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 1st day of April, 1911.

CITIZENS TELEPHONE COMPANY OF JACKSON,
By KLEINHANS & KNAPPEN,
Solicitors.

The foregoing claim of appeal is allowed.
Dated 1st day of April, 1911.

ARTHUR C. DENISON,
U. S. District Judge.

49½ [Endorsed:] No. 1700. U. S. Circuit Court. West. Dist. Mich., So. Div. In Equity. Citizens Telephone Company of Jackson, Complainant, vs. Oramel B. Fuller, Auditor General of the State of Michigan, Defendant. Petition for Appeal and Allowance of same. Filed Apr. 1 1911. Chas. L. Fitch, Clerk. Kleinhans & Knappen, Solrs. for Complainant.

50 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

And now comes the above named complainant, by Kleinhans & Knappen, its solicitors herein, and says that the decree in said cause made and entered on the 27th day of March, 1911, dismissing the Bill of Complaint herein with costs, is erroneous, and against the just rights of the said complainant for the following reasons:

1. Because the Court erred in dismissing said Bill.

2. Because the decree should have granted the relief prayed for by the complainant in said Bill.

3. Because it should have been adjudged in and by said decree that the exemption from taxation of the property of telegraph and telephone companies whose gross receipts within the State of Michigan for the year ending June 30th did not exceed Five Hundred Dollars ($500.00), as provided in Section 4 of Act No. 49 of the Public Acts of the State of Michigan for the year 1909, was invalid and unlawful and constituted an unjust discrimination against the complainant.

51 4. Because it should have been adjudged in and by said decree that the assessment and tax upon the property of said complainant mentioned in said Bill of Complaint, under the terms of said Act No. 49, did deprive complainant of its property without due process of law, in contravention of Section 1 of Article XIV of the Constitution of the United States.

5. Because it should have been adjudged in and by said decree that said assessment and tax last mentioned did deprive complainant of its property without due process of law, in contravention of Section 16 of Article II of the Constitution of the State of Michigan.

6. Because it should have been adjudged in and by said decree that said assessment and tax last mentioned did deny to the complainant the equal protection of the laws, in contravention of Section 1 of Article XIV of the Constitution of the United States.

7. Because it should have been adjudged in and by said decree that said Section 4 of Act No. 49 was in contravention of the Constitution of the United States, especially of Section 1 of Article XIV.

8. Because it should have been adjudged in and by said decree that said Act No. 49 was in contravention of Section 21 of Article V of the Constitution of the State of Michigan, providing that no law shall embrace more than one object, which shall be expressed in its Title.

Wherefore the complainant prays that the decree of the said Cir-

cuit Court be reversed, and that said Court may be directed to enter a decree in accord with the prayer of the Bill.

CITIZENS TELEPHONE COMPANY OF JACKSON,
By KLEINHANS & KNAPPEN,
Solicitors.

51½ [Endorsed:] No. 1700. U. S. Circuit Court. West. Dist. Mich., So. Div. In Equity. Citizens Telephone Company of Jackson, Complainant, vs. Oramel B. Fuller, Auditor General of the State of Michigan, Defendant. Assignments of Error. Filed Apr. 1, 1911. Chas L. Fitch, Clerk. Kleinhans & Knappen, Solrs. for Complainant.

52 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

Know all men by these presents, that we, Citizens Telephone Company of Jackson, the above named complainant, a corporation organized under the laws of the state of Michigan, and having its principal place of business in the City of Jackson in said state, as principal, and Ernest B. Fisher and William J. Stuart, of the City of Grand Rapids in said state, as sureties, are held and firmly bound unto the above named Oramel B. Fuller, Auditor General of the state of Michigan, in the sum of Four Thousand Dollars ($4,000.00) to be paid to the said Oramel B. Fuller, as Auditor General as aforesaid, his successors or assigns, for the payment of which well and truly to be made we bind ourselves and each of us, and our and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the first day of April in the year of our Lord one thousand nine hundred and eleven.

Whereas, the above named Citizens Telephone Company of Jackson has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit by said Circuit Court on the 27th day of March, 1911.

Now, therefore, the condition of this obligation is such that if the above named Citizens Telephone Company of Jackson shall prosecute said appeal to effect and answer all damages and costs, if it fails to make said appeal good, and shall pay the taxes assessed against it mentioned in the Bill of Complaint in this cause which have not heretofore been paid, together with all interest and penalties thereon, if said decree shall be affirmed by the Supreme Court,

then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

53 [Seal. E. B. F.]

CITIZENS TELEPHONE COMPANY OF JACKSON,
By JOSIAH C. RICHARDSON,
President.

Attest:
ERNEST B. FISHER,
Secretary.

ERNEST B. FISHER. [L. S.]
WILLIAM J. STUART. [L. S.]

WESTERN DISTRICT OF MICHIGAN,
County of Kent, ss:

Ernest B. Fisher and William J. Stuart, the sureties on the foregoing bond, being each duly sworn, deposes and says, each for himself, that he is worth the sum of four thousand dollars ($4,000.00) over and above all debts and liabilities, in property situate in the state of Michigan and subject to execution.

ERNEST B. FISHER.
WILLIAM J. STUART.

Subscribed and sworn to before me this first day of April A. D. 1911.

[NOTARIAL SEAL.] ARTHUR E. WELLS,
Notary Public, Kent Co., Mich.

My commission expires Apr. 9, 1914.

I approve the foregoing bond.
Dated April 1, A. D. 1911.
ARTHUR C. DENISON,
United States District Judge.

[Endorsed:] No. 1700. U. S. Circuit Court. West. Dist. Mich., So. Div. In Equity. Citizens Telephone Company of Jackson, Complainant, vs. Oramel B. Fuller, Auditor General, etc., Defendant. Bond on Appeal. Filed Apr. 1, 1911. Chas. L. Fitch, Clerk.

54 United States Supreme Court.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

To Oramel B. Fuller, Auditor General of the State of Michigan, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court, to be holden at the City of

Washington, in the District of Columbia, on the first day of May next, pursuant to an order allowing an appeal filed in the Clerk's Office of the Circuit Court of the United States for the Western District of Michigan, Southern Division, in Equity, wherein The Citizens' Telephone Company of Jackson is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appellants' assignments of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the United States, this first day of April in the year of our Lord one thousand nine hundred and eleven and of the Independence of the United States of America the one hundred and thirty-fifth.

ARTHUR C. DENISON,
U. S. District Judge.

Service of the foregoing citation is hereby acknowledged and accepted.

Dated April 4th, 1911.

ROGER I. WYKES,
FRANZ C. KUHN,
GEORGE S. LAW,
Solicitors for Oramel B. Fuller.

55 UNITED STATES OF AMERICA,
State of Michigan, County of Kent, ss:

Stuart E. Knappen, being duly sworn, says that on April 4, 1911, he served upon Oramel B. Fuller, Auditor General of the State of Michigan, at his office in the Capitol in the City of Lansing, Michigan, the citation hereto attached, by showing the same to the said Oramel B. Fuller, and by delivering to him, in person, a copy thereof.

STUART E. KNAPPEN.

Subscribed and sworn to before me this 7th day of April, 1911.

[Seal of Dora B. Parker, Notary Public, Kent Co., Mich.]

DORA B. PARKER,
Notary Public, Kent Co., Michigan.

My commission expires Feb. 15, 1914.

[Endorsed:] No. 1700. The Circuit Court of the United States for the Western Division of Michigan, Southern Division. In Equity. Citizens' Telephone Company of Jackson, Compl't, vs. Oramel B. Fuller, Auditor General, Def't. Citation. Filed Apr. 18, 1911. Chas. L. Fitch, Clerk.

56 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

No. 1700.

CITIZENS TELEPHONE COMPANY OF JACKSON, Complainant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan, Defendant.

Several cases were pending in this Court against the above named defendant by different Telephone Companies in the State of Michigan as complainants, and the question involved in all the cases was the same, and the testimony was taken in all the cases together as in one suit, and not separately. Among other complainants in such suits was the Citizens Telephone Company, and the docket number of said suit in this Court was 1696, in which case an appeal has been taken from the decree of this Court to the Supreme Court of the United States; and an appeal has also been taken to the Supreme Court in the above entitled cause No. 1700. The record on the appeal in case No. 1696 will contain the testimony and exhibits in said suits.

It is stipulated that only one copy of testimony shall be required to be sent by the Clerk of the Circuit Court to the Supreme Court, or to be printed in the Supreme Court in these two appeals, and that such record may be certified and sent, and be printed in said case No. 1696.

This stipulation shall be returned as part of the record of
57 said case No. 1700. Signed for defendant without prejudice to his right to move to dismiss for any cause.

Dated April 17, 1911.

KLEINHANS & KNAPPEN,
Solicitor- and of Counsel for Complainant.
ROGER I. WYKES,
Solicitor and of Counsel for Defendant.

57½ [Endorsed:] No. 1700. U. S. Circuit Court, West. Dist. Mich., So. Div. In Equity. Citizens Telephone Co. of Jackson, Complainant, vs. Oramel B. Fuller, Auditor General of the State of Michigan, Defendant. Stipulation as to Record on Appeal. Filed Apr. 18, 1911. Chas. L. Fitch, Clerk.

58 UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, ss:

I, Charles L. Fitch, Clerk of the United States Circuit Court for the Western District of Michigan, do hereby certify that the foregoing are true and compared copies of the bill of complaint, motion for injunction and return thereto, demurrer, subpœna, opinion on demurrer, answer, replication, opinion on final hearing, and ap-

peal bond filed, and of the order to show cause, orders continuing hearing on order to show cause, order continuing restraining order in force, order overruling demurrer, final hearing, final decree and order restoring injunctional order pending appeal entered in the within entitled cause, together with the original petition for appeal and allowance thereof, assignments of error, citation and stipulation as to the record on appeal filed in said cause, constituting a complete copy of the files and records in said cause and of the whole thereof; excepting the testimony in said cause which, being included in another transcript simultaneously transmitted by me to the Supreme Court of the United States, is by stipulation of counsel omitted from this transcript.

Witness my official signature and the seal of said Court at Grand Rapids in said District and Division, this 27th day of April, A. D. 1911.

[Seal of the U. S. Circuit Court, Western District of Mich., Southern Division.]

CHARLES L. FITCH, *Clerk.*

Endorsed on cover: File No. 22,658. W. Michigan C. C. U. S. Term No. 285. The Citizens' Telephone Company of Jackson, appellant, vs. Oramel B. Fuller, Auditor General of the State of Michigan. Filed May 8th, 1911. File No. 22,658.

Office Supreme Court, U. S.
FILED.
MAR 18 1913
JAMES H. McKENNEY,
CLERK.

The Supreme Court of the United States.

THE CITIZENS TELEPHONE COMPANY,
Appellant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan.
October Term, 1912
No. 284.

THE CITIZENS TELEPHONE COMPANY OF JACKSON,
Appellant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan.
No. 285.

BRIEF FOR APPELLANTS.

THOMAS P. BRADFIELD and
JACOB KLEINHANS,
Counsel for Appellants.

INDEX.

Page.

Bills to restrain collection of taxes 1-9
Appellants are telephone companies 1
Michigan act of 1899 levying a special tax of 3% on gross receipts 2-3
Act No. 49 of Michigan passed 1909, provided for *ad valorem* assessment 3-9
This Act claimed to violate 14th Amendment 10
Michigan Constitution relative to assessment of property of public utility corporations by state board of assessors 9
Proviso in Act No. 49 exempting from taxation property of telegraph and telephone companies whose gross receipts do not exceed $500 per annum 10
Section 21 of Article V, Michigan Constitution, relative to title of acts 10-27
Act No. 49 claimed to violate this provision 10
Various kinds of telephone exchanges 11-12
Variety of ownership 12-13
Decree dismissed bills 14
Issues presented for determination 14

Exemption of companies whose gross receipts do not exceed $500 per annum invalidates the act 14-26

(a) Judicial construction cannot enlarge or restrict the obvious meaning of the act 14-16
Atty. Gen'l vs. State B'd Assessors, 143 Mich. 73 15
Bate Refrigerator Co. vs. Sulsberger, 157 U. S. 37 15
Denn vs. Reed, 10 Pet. 527 15
Gibbons vs. Ogden, 9 Wheat. 1 15
Leoni vs. Taylor, 20 Mich., 148, 154 15
People vs. Plumstead, 2 Mich. 465 15
Ry. Co. vs. Phelps, 137 U. S. 528 16
Swartz vs. Siegel, 117 Fed. 18 16
Whipple vs. Saginaw Judge, 26 Mich. 342 15
Wilt vs. Cutler, 38 Mich. 189 15

(b) Law must operate equally and uniformly, and classification must be based upon some reasonable ground 16-19-21
Am. Sugar Refining Co. vs. Louisiana, 179 U. S. 89, 92 16
Connolly vs. United Sewer Pipe Co. 184 U. S. 540 20

Cotting vs. Kas. City Stockyards Co. 183 U. S. 79, 112 16-17
Field vs. Asphalt Co. 194 U. S. 618, 621, 622 16
Ky. R. R. Tax Cases, 115 U. S. 321, 337 16
McLean vs. Ark. 211 U. S. 539 21
Ry. Co. vs. Ellis, 165 U. S. 150, 160-6 16
St. Louis Cons. Coal Co. vs. Ill. 185 U. S. 203 21
S. W. Oil Co. vs. Texas, 217 U. S. 114 16
State vs. Haun, 61 Kas. 146 20

(c) Legislature has right to make exemptions 18
B'd Supervisors vs. Aud. Gen'l. 65 Mich. 408 18
Loan Co. vs. Detroit, 136 Mich. 451 18
People vs. Aud. Gen'l. 7 Mich. 84 18

(d) This power is not absolute and without limitation 18
1 Cooley Taxation (3rd Ed.) 382 19
Cotting vs. Kas. City Stockyards Co. 183 U. S. 79 19
Gulf, etc. Ry. vs. Ellis, 165 U. S. 150 19
R. R. Co. vs. Penna., 134 U. S. 237 18
Ywick Wo vs. Hopkins, 118 U. S. 369 18

(e) The exemption does not operate to segregate any definite class of telephone companies to the exclusion of all others 23

(f) The value of non-assessed properties is substantial 25

The object of the act is not expressed in the title and is in conflict with the Michigan Constitution 26-30

Title of Act No. 49 27

Atty. Gen'l vs. Bolger, 128 Mich. 355 28
Bresler vs. Delray Real Est. & Investment Co. 156 Mich. 3 30
Callaghan vs. Chipman, 59 Mich. 614 28-29
Cooley's Const. Lim. 143 28
Depot Co. vs. Com'nr of Railroads, 118 Mich. 340 28
Detroit vs. Wayne Cir. Judge, 112 Mich. 319 28
Fish vs. Stockdale, 111 Mich. 63[illegible] 29
In re Hauck, 70 Mich. 396 30
Pratt Food Co. vs. Bird, 148 Mich. 634 28
Wilcox vs. Paddock, 65 Mich. 24 29

Schedule A, showing gross receipts of telephone companies over $400 and under $600 31-32

Schedule B, official report of Act No. 49 33-34

The Supreme Court of the United States.

THE CITIZENS TELEPHONE COMPANY, Appellant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan.
October Term, 1912
No. 284.

THE CITIZENS TELEPHONE COMPANY OF JACKSON, Appellant,
vs.
ORAMEL B. FULLER, Auditor General of the State of Michigan.
No. 285.

BRIEF FOR APPELLANTS.

STATEMENT OF FACTS.

The bills in each of these cases are substantially alike, and were filed for the purpose of restraining the collection of a tax which was levied under a law which it is claimed violated the due process and equal protection clauses of the Fourteenth Amendment.

Both of the appellants are telephone companies. In No. 284, the company is located in the City of Grand Rapids, where it has 10,000 telephones in use, and by its own and other lines is engaged in the telephone business all over the southern peninsula. (R. 90).

In No. 285, the company is located in the City of Jackson, and, while it is a smaller company than the one in Grand Rapids, it has an extensive business.

Both of these companies are Michigan corporations. Prior

to 1909, telephone companies were taxed under Act No. 179 of the Public Acts of Michigan for the year 1899, at the rate of 3 per cent on their gross receipts for the year in which the tax was laid. This Act also embraced express and telegraph companies. Section 2 of the Act required telephone and telegraph companies to make, among others, the following report to the Auditor General of the State on or before the first Monday in April in each year, viz:

> "f. The amount of the gross receipts on their current business in this state for the year ending December 31st next preceding such report.

Sections 3, 5 and 6 of the Act, so far as material, are as follows:

> "Sec. 3. The Auditor General shall, on or before the fifteenth day of May in each year, make and file in his office a computation of the amount of taxes which will become due on the first day of July from each express company, telephone company and telegraph company liable to pay taxes under the provisions of this act, which computation shall be based upon the report of such express company, telephone company and telegraph company for the year ending December thirty-one, next preceding, required to be made to the Auditor General, and in case any express company, telephone company or telegraph company shall fail to make such report to the Auditor General, as provided by Section 2 of this Act, then the provisions of Section 4 of this Act shall apply as fully as though such report was made and filed."
>
> "Sec. 5. Every express company, telephone company and telegraph company, owning, operating or transacting an express business, telephone business or telegraph business in this state shall, on or before the first day of July, in each year, pay to the State Treasurer, on the statement of the Auditor General, a specific tax upon the property and business of such express company, telephone company and telegraph company operating within this state, which tax shall be equal to an amount to be computed in the following manner: Upon the gross receipts of such express company derived from business within this state for the year included in the report provided for in Section 2 of this Act, 3 per cent of such gross receipts; upon the gross receipts of such telephone company derived from business within this state for the year included in the report provided for in Section 2 of this Act, 3 per cent of such gross receipts; and upon the gross receipts of such telegraph company derived from business within this state for the year included in the report

provided for in Section 2 of this Act, 3 per cent of such gross receipts, which said specific tax may be recovered in any court of this state."

"Sec. 6. The taxes paid under this Act shall be in lieu of all other taxes upon the properties and business of said companies, except such real estate as is owned and can be conveyed by such companies under the laws of this state, and not actually occupied in the exercise of its franchises and not necessary in the proper operation of its business, but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and be subject to the same conditions and limitations as to the collection and return of taxes thereon as is other real estate in the several townships and municipalities within which the same may be situated."

Act No. 282 of the Public Acts of 1905 provided for the assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, and for the levy of taxes thereon by a state board of assessors. This act as originally passed did not include within its terms either telephone or telegraph companies.

In 1909 the Legislature passed Act No. 49 of the Public Acts of that year, which amended the title, and Sections 1, 4, 5, 6, 8, 9, 10, 13, 14, 18 and 21 of Act No. 282 of the Acts of 1905, and thereby attempted to provide for the assessment by the State Board of Assessors of the property of telephone companies on an ad valorem basis instead of assessing them a specific tax on their gross earnings, as was provided by the Act of 1899 above mentioned.

The provisions of Act No. 49 of the Public Acts of 1909, in so far as said Act purports to affect telephone companies, are as follows:

"49. AN ACT to amend the title and Sections 1, 4, 5, 6, 8, 9, 10, 13, 14, 18 and 21 of Act No. 282 of the Public Acts of 1905, entitled 'An Act to provide for the assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, and for the levy of taxes thereon by the State Board of Assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act.'

The People of the State of Michigan enact:

Section 1. The title and Sections 1, 4, 5, 6, 8, 9, 10, 13, 14, 18 and 21 of Act No. 282 of the Public Acts of 1905, entitled 'An Act to provide for the assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act,' are hereby amended to read as follows:

TITLE.

An act to provide for the assessment of the property, by whomsoever owned, operated or conducted, of railroad companies, union station and depot companies, telegraph companies, telephone companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight companies, and all other companies owning, leasing, running or operating any freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this Act, over or upon the line or lines of any railroad or railroads in this state, and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act.

* * * * * *

Sec. 4. It shall be the duty of said board to make an annual assessment upon an assessment roll, to be prepared by said board, of the property, by whomsoever owned, operated or conducted, and having a situs in this state as hereinafter defined, of railroad companies, union station and depot companies, telegraph companies, telephone companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, and all other companies owning, leasing, running or operating any freight, stock, refrigerator, or any other cars not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this state: Provided, That the property of telegraph and telephone companies whose gross receipts within this state for the year end-

ing June 30 do not exceed five hundred dollars shall be exempt from taxation. All telegraph and telephone companies doing business in this state shall make the report required by Section 6 of this Act to the State Board of Assessors: Provided, That such report for the year 1909 shall be made and filed with said board on or before the first day of November, 1909.

Sec. 5. The term property, as used in this Act, shall be deemed to include all property, real or personal, belonging to the persons, corporations, companies, co-partnerships and associations subject to taxation under this act, including the right of way, road bed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph and telephone poles, wires, conduits, switchboards and all other property used in carrying on their business and owned by them respectively, and all other real and personal property, and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property: Provided, however, that this definition shall not include, apply to, or subject to taxation, such real estate as is owned and can be conveyed by such persons, corporations, companies, co-partnerships and associations under the laws of this state which is not actually occupied in the exercise of their franchises, or in use in the proper operaton and conduct of their business, but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon as is other real estate in the several townships or municipalities in which the same may be situated. The term company, corporation, co-partnership, association, or person, wherever used in this act, shall apply to and be construed as referring respectively to any railroad company, union station and depot company, telegraph company, telephone company, sleeping car company, express company, car loaning company, stock car company, refrigerator or fast freight line company, and any other companies owning, leasing, running or operating any freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this state, and to any firm, joint stock association, co-partnership, corporation, or other association or person, engaged in carrying on any business, the property of which is subject to taxation under this

act. The term 'Property having a situs in this state' shall include all the property, real and personal, of the persons, corporations, companies, co-partnerships and associations enumerated in this act, owned, used and occupied by them within the limits of this state, and also such proportion of their rolling stock, cars and other property as is used partly within and partly without this state, as herein provided to be determined.

* * * * * *

Sec. 6 requires a report to be made by the various companies to the State Board of Assessors of the property of the several companies for the purpose of determining their true cash value. The details of this report are specified in this section, but they are not material to the issues in controversy.

We omit from Sec. 9 the provisions relating to railroads, express companies, etc., and only quote so much thereof as relates to telephone companies:

"Section 9. Subsequent to the filing of the reports required in the preceding sections, and prior to the fifteenth day of January in each year, it shall be the duty of the State Board of Assessors to prepare an assessment roll as provided in Section 4 of this act, upon which they shall assess, at the true cash value, on the thirtieth day of June next preceding the time of making said assessment, all the property of the companies herein enumerated, subject to taxation under this act, which said assessment shall not be final until reviewed as hereinafter provided. For the purpose of arriving at the amount and character and true cash value of the property belonging to said companies as appearing upon the assessment roll for the purpose of assessment and taxation, the said board may personally inspect the property belonging to said companies, and may take into consideration the reports filed under this act, the reports and returns of said companies filed in the office of any officer of this state, and such other evidence or information as may be obtainable or possessed by said board, bearing thereon. * * *

In determining the true cash value of the property of each telegraph company and telephone company which owns, leases, operates or uses lines partly within and partly without this state, the said board shall be guided, in ascertaining the property subject to taxation in Michigan, by the proportion which the number of miles of telegraph or telephone lines controlled or used by said company as owner, lessee, or otherwise, within the State

of Michigan, bears to the entire mileage of telegraph or telephone lines controlled or used by said company, as owner, lessee, or otherwise, both within and without this state. * * *''

''Section 10. Upon said assessment roll, after the name of each of the companies assessed thereon, shall be placed a general description of the property of said companies, which shall be deemed to include all of the properties of said companies liable to taxation under this act. * * * In the case of telegraph and telephone companies the following general description may be used: 'Real estate, exchanges, switchboards, conduits, telegraph and telephone poles and lines and other appurtenances, and all other property used in carrying on the business of said company, and subject to taxation by a State Board of Assessors.' * * * In an appropriate column opposite the names of said corporations shall be extended the cash valuations of the properties of the said companies so assessed.''

''Section 13. It shall be the duty of the said State Board of Assessors, not later than the fifteenth day of January in each year, from the information contained in the reports provided for in Section 12 of this act, to ascertain and determine the average rate of taxation for the year in which said reports are required to be made, levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes, and enter the same upon its records forthwith, together with the method by which such average rate was ascertained and determined.''

''Section 14. Said board shall tax the property of the several companies as assessed by it at the rate as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment roll, opposite the description of their respective properties. After the completion of said tax roll, and prior to the first day of March, in each year, the said board shall attach thereto a certificate, signed by the members of the board, or a majority thereof, which shall be as follows: 'We do hereby certify that we have set down in the above assessment roll, all the property of railroad companies, express companies, union station and depot companies, telegraph and telephone companies, car loaning, stock car, refrigerator and fast freight lines, and other car companies, and other companies owning, leasing, running or operating cars, and sleeping car companies, liable to be taxed in this state, according to our best information, and that we have estimated the same

at what we believe to be the true cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for state, county, township, school, municipal and other purposes, levied through this state during the preceding year, as determined by us.' The said tax roll shall thereupon be forthwith delivered to the Auditor General, who shall immediately notify by registered mail the several companies taxed thereon to pay the taxes extended thereon to the State Treasurer. The said taxes shall be payable on the first day of April following the assessment and levy thereof, and shall be in lieu of all taxes for state and local purposes, not including special assessments on property particularly benefited, made in any county, city, village or township. All taxes not paid before the first day of May in the year in which the same are payable, shall bear interest thereafter at the rate of one per centum per month or any fraction thereof. The taxes so extended against said companies shall become forthwith a debt from each of said companies to the state and shall constitute a lien upon all the property of said companies, real, personal and mixed, which lien shall take precedence of all demands, judgments, assignments by warranty deed, or otherwise, or decrees against said companies, which lien and debt may be enforced by seizure or sale of said property, or such portion thereof as may be necessary to satisfy the same, as hereinbefore provided. The State Board of Assessors shall, upon the completion of said roll and the correction hereinbefore provided for, annex to said roll a warrant, signed by the said state board, or a majority of them, commanding the Auditor General to collect the several sums mentioned in the last column of such roll, and being the sum for which the said company was assessed and was liable to pay for a tax upon its property, under the provisions of this act for the purposes provided for in this act, and the said warrant shall authorize and command the Auditor General, in case any corporation, company or person named in the assessment roll, shall neglect or refuse to pay its tax, to levy the same by distress and sale of the properties of said corporation, company or person, or such portion thereof as shall be necessary to raise sufficient money to satisfy said tax and the expense of said sale, after giving the same notice of said sale as provided for in the general laws of this state for the sale of property seized for taxes and offered for sale: Provided, That he may bring an action in the name of the people of the State of Michigan in any court of competent jurisdiction in the State of Michigan, or in any other state for

the enforcement of said lien, and upon the recovery of judgment or decree therein the same may be collected by execution, levy and sale, as in other cases, upon judgments in courts of record."

Section 21 repealed all inconsistent acts.

This law took effect in September, 1909, and the first assessment under its provisions was for the taxes of 1910.

Article X of the Constitution of Michigan relates to finance and taxation. Sections 3 and 5 of that Article are as follows:

"Section 3. The Legislature shall provide by law a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: Provided, That the Legislature shall provide by law a uniform rule of taxation for such property as shall be assessed by a State Board of Assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes."

"Section 5. The Legislature may provide by law for the assessment at its true cash value by a State Board of Assessors, of which the Governor shall be ex-officio a member, of the property of corporations, and the property, by whomsoever owned, operated or conducted, engaged in the business of transporting passengers and freight, transporting property by express, operating any union station or depot, transmitting messages by telephone or telegraph, loaning cars, operating refrigerator cars, fast freight lines or other car lines, and running or operating cars in any manner upon railroads, or engaged in any other public service business, and for the levy and collection of taxes thereon."

Under the above mentioned act the property of the Grand Rapids company was valued at $2,300,000, and the tax assessed at $47,548.61, and the property of the Jackson company was valued at $160,000, and the tax assessed against it at the sum of $3,307.73. (R. 43).

The Grand Rapids and Jackson companies, with other telephone companies, filed separate and independent bills against the Auditor General, praying that the pretended assessment and tax made by the State Board of Assessors might be decreed to be void and that the cloud cast upon their properties might be removed, and that the Auditor General might be restrained from proceeding under color of the authority as-

sumed to be given by said Act No. 49 of the Public Acts of 1909, and from collecting or attempting to collect said taxes.

Section 4 of Act. No. 49, above quoted, contains the following proviso:

> "Provided that the property of telegraph and telephone companies whose gross receipts within this state for the year ending June thirty do not exceed five hundred dollars shall be exempt from taxation."

The bills in all the cases charged that there were many corporations, companies and persons carrying on the telephone business under the same conditions as those under which complainants transacted their business within the State of Michigan whose gross receipts for each year, and particularly whose gross receipts within the State of Michigan for the year ending June 30, 1909, did not exceed the sum of $500, and that under and by virtue of said proviso the properties of said telephone companies were exempt from all taxation. (No. 284, R. 7; 285, R. 7).

It was claimed that the exemption of companies whose gross receipts did not exceed $500 was an unlawful, unreasonable and arbitrary discrimination against the complainants, merely and solely because of the amount of business done by them, and that the tax was an arbitrary and unlawful exaction, and unless canceled and restrained it would deprive the complainants of their property without due process of law, and would deny to them the equal protection of the laws, in violation of Section 1 of Article 14 of the Constitution of the United States, and of Section 16 of Article II of the Constitution of the State of Michigan, which is as follows:

> "Section 16. No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law."

And that the exemption was based upon no reasonable ground and afforded no reasonable basis of classification, but was arbitrary and unlawful.

It was also charged in the bill that Act No. 49, in so far as it affected telephone companies, was void and of no effect under the Constitution of the State of Michigan, in that the title of the act was in conflict with Section 21 of Article V of the Constitution of the State, which, so far as material, is as follows:

> "Section 21. No law shall embrace more than one object, which shall be expressed in its title." (R. 284, 7; 285, 7).

Proofs were taken in all the cases commenced together, as in one suit and not separtely, and by stipulation in the Jackson case, only one transcript of the testimony was required to be sent to this court or to be printed on these appeals. (No. 285, R. 40).

There was no material dispute as to the facts in the case. The testimony showed that there were various systems of doing business in the state, as follows:

The City Exchange.

In a large city the service is practically confined to urban business. In cities like Detroit and Grand Rapids there may be sub-stations with switchboards as well as a central switchboard, but the business in principally confined to making connections between subscribers within the limits of the city, except as toll service may be required, which is afforded by a separate and distinct system of switchboards and lines.

Smaller City Exchanges.

The only difference between the business of a smaller city, like Lansing, for example, and the larger city exchanges is that in the former there is apt to be included a greater amount of business from the territory outside of the city, which is cared for by the exchange in the same manner as is that of its urban subscribers.

The Village Exchanges.

In this case one switchboard is ample to provide, not only for the needs of the village subscribers, but of the subscribers upon the various roadway farm lines running into the exchange. Generally the business outside of the limits of the village is of greater volume and importance than that within its limits. Connections can be made from toll lines running into the exchange, so that the subscribers, whether in the village or upon the roadway lines, can secure communication with every person within reach of the toll lines connected with the exchange.

Roadway Farm Lines.

The roadway farm lines consist of lines of wire stretched upon poles set in the country highways and leading to a connection with the same village exchange or switchboard. The various subscribers along such a line have instruments installed in their houses connecting with the roadway farm lines, sometimes directly and sometimes by branch lines, enabling them to secure connection with the switchboard, so that subscribers may not only communicate with each other,

but with subscribers upon other roadway farm lines running into the switchboard and with the toll lines.

The Michigan State Telephone Company (Bell Company), as a corporation, owns properties of the character described in each of the foregoing systems, upon which it was required to pay ad valorem taxes under this law. The same was true of all other larger companies, including the Citizens of Grand Rapids.

Variety of Ownership.

Unity of ownership is not at all essential to an efficient telephone service. The instruments may be in one ownership, the poles and lines in another and the switchboards in still another, and the service must be the same. This condition of things actually exists in many parts of the state and is illustrated by the variety of subsidiary companies which operate in connection with the larger companies.

The contracts made with the various organizations by the Bell Company are typical. (R. 75-80).

The Sub-License Company.

This company is generally a separate organization—not always incorporated—which undertakes to give a telephone service in a certain locality or territory. Sometimes this territory is limited to a township or two; in other cases it extends over a whole county. The sub-license contracts are made with corporations, individuals, partnerships and associations. These companies, as a rule, make a regular charge for telephone service and operate for profit, conducting their business essentially as the larger companies do. The sub-license company operates a complete telephone system, and, except as to the extent of territory covered, is identical with the larger companies. It owns its own exchange and the system of lines which it operates. (Berry, R. 65, 176, 177; Tarte, R. 86, 87, 93; Melchers, R. 93).

The Rural Contract.

This contract is generally made with an individual who undertakes to develop a certain section through the co-operation of the farmers, who generally build the lines on the highways on which they reside and own the lines as an association. They contract for connections with the rural exchange and the rural manager leases them telephones and does their switching at a certain rental. The contract of the Bell Company is made with the rural contractor. He makes his own contracts or arrangements with the people throughout the territory in which the business is conducted, under a form of contract which that company furnishes to keep the business

uniform. The manager has no ownership in the lines or the instruments, and the Bell Company has no control over the manager or any of the lines constituting the system. In this method the switchboard and telephone instruments are owned by the parent company, while the lines radiating from the switchboard, both within and without the village, are owned by the local people, who may be organized as a corporation, as a partnership, or who may be individuals or an association. (Berry, R. 67-69, 73, 75-78, 176, 177; Tarte, R. 86, 88, 91, 123; Melcher, R. 94, 99, 125).

Roadway Farm Lines.

These are lines running through country highways to a connection with an exchange intended to serve farmers along the line. Sometimes these lines are built and owned by the larger companies in connection with their other property. The Bell Company has lines of this character serving about 20,000 telephones, the Citizens of Grand Rapids about 7,000 and the Union Telephone Company about 3,500. In other cases the lines are built and maintained by separate organizations of persons along the line. A few are constructed by regular corporations organized for profit, but generally by mutual associations. It sometimes happens that there are two roadway lines upon the same highway, giving service of precisely the same kind, one belonging to the larger company and taxed and the other belonging to a smaller company and not taxed.

A list of the sub-license, rural and roadway companies doing business with the Bell Company can be found (R. pp. 65-73), and of the same class of companies doing business with the Citizens of Grand Rapids (R. 86-90), and of the same class doing business with the Union Telephone Company (R. 95-98).

Exhibit B (R. 57-64) is a list of 435 companies that are exempt from taxation under this act. The value of the exempted telephone properties was $296,027.34. (Parker, R. 206).

Competition.

With all companies reaching out into all parts of the state for business it is obvious that any one of these smaller companies must come into competition with other existing companies seeking the same territory. A conspicuous instance of this competition is where two roadway companies occupy the same highway. Undoubtedly in many instances the construction of the small line has prevented the construction of similar lines by other larger companies who are seeking to extend their business into the same territory.

All of the companies operate lines occupying the public highways, and in all cases, whether the business is done by the larger company, the smaller ones, or combinations, the basic fact of telephone service—the transmission of messages over the wires and by standard instruments—is inevitably and necessarily the same.

The decree of the court below dismissed the bills. The effect of this was to hold that Act No. 49 did not deprive the complainants of their property without due process of law, and did not deny to them the equal protection of the laws, and that the act was not in violation of Section 1 of Article XIV of the Constitution of the United States.

We allege the decree to be erroneous in this respect.

The effect of the decree was also to hold that the Title of Act No. 49 was not in conflict with Section 21 of Article V of the Constitution of Michigan, which provides that no law shall embrace more than one object, which shall be expressed in its Title.

We allege the decree to be erroneous in this respect.

ARGUMENT.

Two issues are presented for determination:

1. Whether the exemption from all taxation of telegraph and telephone companies whose gross receipts do not exceed $500 per year, contained in Section 4, invalidates Act No. 49.

2. Whether the act is not unconstitutional for the reason that the object of the provisions of the act extending the ad valorem sysem of taxation to telegraph and telephone companies, is not expressed in the title.

I.

Does the Exemption of Companies Whose Gross Receipts Do Not Exceed $500 Per Year Invalidate the Act?

Judge Denison, in rendering the opinion in the court below, found reasons which were more satisfactory to him than the mere amount of earnings as a basis of classification, and he ignored the earnings for this purpose, although they are the only basis named in the act. (R. 31).

The law as written does not suggest any classification except that based upon the amount of the gross receipts of the company. It in terms, as required by the Michigan Constitution, applies to all properties alike, "by whomsoever owned, operated or conducted." If the intention of the Legislature is to be ascertained from the language used there is no room for any other meaning than that clearly expressed, viz: that the amount of gross receipts, and that alone, shall

determine whether the property shall or shall not be taxed. Where the language of a statute is clear and unmistakable there is no justification for a judicial construction either enlarging or restricting its obvious meaning.

Mr. Chief Justice Marshall says, in *Gibbons vs. Ogden*, 9 Wheat., 1:

> "As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our constitution and the people who adopted it must be understood to have employed words in their natural sense and to have intended what they have said."

> "In every exposition of a statute the intention of the Legislature is undoubtedly the end to be sought, but the construction to be given should not be repugnant to the clear meaning of the words. The courts are not at liberty, in order to effectuate what they may suppose to have been the intention of the Legislature, to put a construction upon the enactment not supported by the words, though the consequence should be to defeat the object of the act. When the meaning of the words is plain and obvious the only safe course is to suppose the legislature to have intended those things which the words denote and to abstain from all attempts to discover a different meaning by supposition or conjecture." (Graves, J.)

Leoni vs. Taylor, 20 Mich., 148-154.
Whipple vs. Saginaw Judge, 26 Mich., 342.
Wilt vs. Cutler, 38 Mich., 189.
People vs. Plumstead, 2 Mich., 465.
Attorney General vs. State Board of Assessors, 143 Mich., 73.

"Where the language of the act is explicit there is great danger in departing from the words used to give an effect to the law which may be supposed to have been designed by the legislature. * * * It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from the provisions." (McLean, J.)

Denn vs. Reid, 10 Peters, 527.
Bate Refrig. Co. vs. Sulzberger, 157 U. S., 37.

"Where a statute is free from all ambiguity, the letter of it is not to be disregarded in favor of a presumption as to the policy of government, even though it may be

the settled practice of the department."
Ry. Co. vs. Phelps, 137 U. S., 528.

"There is no safer or better settled canon of interpretation than that when language is clear and unambiguous, it must be held to mean what it plainly expresses and no room is left for construction."
Swarts vs. Siegel, 117 Fed., 18.

Telegraph and telephone companies with limited earnings are the only classes of companies which are favored by the exemption. The other classes of companies taxed by the act, such as railroads, sleeping car companies, express companies, etc., are subject to its provisions, whether their gross receipts exceed $500 per year or not. It is also significant that the telegraph and telephone companies included in the exemption are not simply exempted from the provisions of the act, leaving them to pay taxes as theretofore, but are exempted entirely from taxation of every kind whatsoever, whether under this or any other law. The selection of these companies as the beneficiaries of the legislative favor is purely arbitrary. No valid reason exists for the discrimination thus made over the other classes of companies included in the law, and unless the legislature possesses the absolute power to exempt property from taxation capriciously and without reason, this exemption cannot be sustained.

It is well settled that the state may classify property for the purpose of taxation, but the law must operate equally and uniformly upon all persons in similar circumstances, and it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection.

Railway Co. vs. Ellis, 165 U. S., 150, 160-6.
S. W. Oil Co. vs. Texas, 217 U. S., 114.
Ky. R. R. Tax Cas., 115 U. S., 321, 337.
Am. Sugar Refining Co. vs. Louisiana, 179 U. S., 89, 92.
Field vs. Asphalt Co., 194 U. S., 618, 621-622.
Cotting vs. Kansas City Stock Yards Co., 183 U. S., 79, 112.

The telephone companies in Michigan, large and small, are engaged in a like business and under similar circumstances. Under the authorities above cited they cannot be divided into different classes and a different rule applied to each class, but as they belong to one common class the law must operate equally and uniformly on all the members of that class, large and small, and all of them must be taxed or all exempt.

In the Cotting case (supra) the court said (pp. 111-112):

> "But while recognizing to the full extent the impossibility of an imposition of dues and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other."

They can only be divided into different classes when the circumstances or conditions under which some of them do business are dissimilar to those of the others. The amount of business done by any of these companies is not a proper method of determining whether its property shall or shall not be subject to an ad valorem tax. It cannot be seriously contended that the property of two individuals doing the same kind of business should be treated differently for purposes of taxation, because the business of one was large and the other small. It is true that specific taxes can be based on the amount of the business taxed, but an ad valorem tax cannot be levied on the property of any man or corporation because the business in which it is used exceeds a certain sum, while other property of the same kind and used in a like business is exempt because the business falls below that sum. The business is not taxed under Act 49. It is the property used in the business, and it is all of like kind and used for like purposes, and each dollar's worth should be treated alike. The exemption in question is based on the gross receipts of similar companies regardless of the amount of their business. A corporation whose gross receipts are only $499 per annum, and having a large amount of property, is exempt, while another company whose gross receipts are $501 per annum, and having a smaller amount of property, is taxed. This is unequal and unfair. The receipts may fall below the $500 limit because of the incompetency of the management and a premium is put on such faulty management. If a company is operating on the mutual plan and furnishing service to its members at substantially cost, its gross income will be small, while its property may be comparatively large; while, on the other hand, another company operating for profit may have a greater income but less property, and in this instance the larger property is not taxed, while the smaller is. It must be remembered that the tax in question is a tax *on property* according to its value, and not a tax on the privilege of doing business.

The attempt to assess some and exempt other property of

the same class, solely on account of the amount of business done by the use of such property, is an arbitrary and unjust discrimination between the owners, which violates the due process and equal protection clauses of the 14th Amendment, as well as the uniform rule of taxation of the Michigan Constitution.

As a general proposition, the legislature has the power to designate the properties which are subject to taxation. This carries with it also the right to make exemptions.

People vs. Auditor General, 7 Mich., 84.
Board of Supervisors vs. Auditor General, 65 Mich., 408.
Loan Co. vs. Detroit, 136 Mich., 451.

Under our scheme of government, however, this power is not absolute and without limitation, and its capricious exercise will not be sustained. As has been well said by Mr. Justice Matthews, in the case of *Yuick Wo vs. Hopkins*, 118 U. S., 369:

> "When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power."

This principle as applied to laws imposing taxes has been stated by the Supreme Court in the case of *Railroad vs. Penna.*, 134 U. S., 237, as follows:

> "The provision in the Fourteenth Amendment, that no state shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the state in framing their constitution. But clear and hostile discriminations against particular persons and

classes, especally such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject that would include all cases."

Speaking on this same subject, Mr. Justice Cooley says:

"An exception, it would seem, in order to be admissible, should be made either on the basis of contract, in which case the public is supposed to receive a full equivalent thereof, or it ought to be made on some ground of public policy, such as might justify a pension or a donation of public funds on some general rule, of which all who come within it may have the benefit, or such as at least makes the public at large interested in encouraging or favoring the class or interest in whose behalf the exemption is made. It is difficult to conceive a justifiable exemption law which should select single individuals or corporations or single articles of property, and taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality. It would lack the semblance of legitimate tax legislation."

1 Cooley on Taxation, 382, 3rd Ed.

The exemption cannot be sustained upon the ground that the state, in its discretion, may classify property for the purpose of taxation and exempt certain specified classes from the operation of the law. A classification for such purpose "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without such basis. Arbitrary selection can never be justified by calling it classification." (Gulf, etc., Ry. vs. Ellis, 165 U. S., 150).

A classification made solely upon the basis of the amount of business transacted does not fall within the requirement of this rule, and, consequently, is void. The rulings of the court upon this point are uniform and conclusive.

A late and leading case upon this subject is that of *Cotting vs. Kansas City Stock Yards Co.*, 183 U. S., 79. The State of Kansas passed a law imposing certain duties and regulating the charges of stock yard companies whose average daily receipts were not less than 100 head of cattle or 300 head of hogs or 300 head of sheep per day. It was attempted to sustain this law upon the ground that the legislature had power to classify industries and occupations, and that the classifica-

tion made in the act was a reasonable exercise of the legislative discretion. This court, after a full review of all of the authorities, held the law to be void, as a violation of the provisions of the Fourteenth Amendment to the Federal Constitution, and stated its conclusions as follows:

> "But while recognizing to the full extent the impossibility of an imposition of duties and obligatons mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must, nevertheless, always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other. There can be no pretense that a stock yard which receives 99 head of cattle per day a year is not doing precisely the same business as one receiving 101 head of cattle per day each year. It is the same business in all its essential elements, and the only difference is that one does more business than the other. But the receipts of an extra two head of cattle per day does not change the character of the business. If once the door is opened to the affirmance of the proposition that a state may regulate one who does much business, while not regulating another who does the same but less business, then all significance in the guarantee of the equal protection of the laws is lost, and the door is opened to that inequality of legislation which Mr. Justice Catron referred to in the quotation above made. This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the character of the business, but is a positive and direct discrimination between persons engaged in the same class of business and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would. We think, therefore, that the principle of the decision of the Supreme Court of Kansas in State vs. Haun, supra, is not only sound, but is controlling in this case, and that the statute must be held unconstitutional, as in conflict with the equal protection clause of the Fourteenth Amendment."

In the case of *State vs. Haun*, 61 Kans., 146, above referred to, the State of Kansas had passed an act requiring the payment of wages of laborers to be in money, with the poviso

that the act should apply only to corporations and trusts that employed ten or more persons. The Supreme Court of Kansas held the act void, as being a violation of the Fourteenth Amendment, and the grounds of the decision were adopted and affirmed in the *Cotting* case.

A similar question was involved in *Connolly vs. United Sewer Pipe Co.*, 184 U. S., 540. The State of Illinois had passed a law prohibiting trusts and combinations in restraint of trade, with the proviso that the act should not apply to combinations controlling agricultural products or live stock in the hands of the producer or raiser. The court held that this attempted classification rested upon no reasonable basis, was purely arbitrary, and, therefore, denied the equal protection of the laws to those against whom it discriminated.

There are many other cases in which this same subject is discussed, but the foregoing decisions seem to be controlling.

An exemption of mutual or co-operative companies not operated for profit, based upon the character of the ownership, is not permissible.

It is contended that under the decisions of this court in the case of *St. Louis Cons. Coal Co. vs. Ill.*, 185 U. S., 203, and *McLean vs. Ark.*, 211 U. S., 539, it is open to the defendants to show that the application of the rule stated in the statute in fact exempts a particular class which it would have been competent for the legislature to exempt if it had been so expressed in the law, and that, therefore, the law should be read as if that class, as a class, had been specifically pointed out in the act as the beneficiary of the legislative favor.

These cases, however, have no application in a case such as that before the court. The exceptions in both cases mentioned were somewhat reluctantly sustained as a reasonable classification in the exercise of the police power.

Mr. Justice Day, quoting from and adopting the reasoning of Mr. Justice Brown in the St. Louis Coal Company case, says:

> "In the case under consideration there is no attempt arbitrarily to select one mine for inspection, but only to assume that mines, which are worked upon so small a scale as to require only five operators, would not be likely to need the careful inspection provided for the larger mines, where the workings were carried on upon a larger scale or at a greater depth from the surface, and where a much larger force would be necessary for their successful operation. It is quite evident that a mine which is operated by only five men could scarcely have

passed the experimental stage, or that the cautions necessary in the operation of coal mines of ordinary magnitude would be required in such cases. There was clearly reasonable foundation for discrimination here.

This language is equally opposite in the present case."

McLean vs. Arkansas, 211 U. S., 539-551-552.

It is a far cry from these cases to the exemption from ad valorem taxation of certain telephone companies when other telephone companies doing a similar business are taxed, under a constitution which says "The legislature shall provide by law *a uniform rule* of taxation for such property as shall be assessed by a state board of assessors," (Article X, Section 3), and which further provides that the assessment for the purpose shall be upon all property "by whomsoever owned, operated or conducted, engaged in the business of * * * transmitting messages by telephone or telegraph." (Article X, Section 5).

These provisions of the constitution clearly indicate an intention that all properties of this character, "by whomsoever owned, operated or conducted," shall be taxed alike, and that no discrimination shall be permitted upon the basis of a difference in the character of ownership of the properties.

Such an exemption would also be invalid upon another ground, assuming (which is clearly not the case under the evidence) that the application of the rule resulted in exempting all mutual or co-operative associations formed by farmers clubbing together to build and maintain telephone lines for the purpose of getting cheap service, and not for any other profit, and that no other properties were exempted. That fact affords no just or reasonable ground for exempting the actual property employed from taxation at its true value.

In the first place, the use of the term "not for profit," which seems to have been devised as a pretext for sustaining this exemption, is altogether fallacious and misleading. The sole motive for the organization of these mutual associations was to secure a personal advantage and whatever reduction of cost of service can be obtained in that manner is a distinct personal profit which accrues to each member of the association when so obtained, to the same extent as if it were paid as a money dividend from the receipts of a corporation, after payment of the actual cost of operation. The result is the same.

In the second place, under an ad valorem system of taxation, property must be assessed at its true value, regardless of whether it is productive or not (except as the fact may affect its value). It is neither reasonable nor just to say

that farmers operating telephone systems for their own mutual advantage shall be exempt and all others operating similar properties for such advantage as they may gain from so doing shall bear the full burden of taxation. No one would contend that a law which imposed an ad valorem tax upon dwellings which were rented and exempted all dwellings which were occupied by their owners should be sustained, under a constitution which requires that all property shall be taxed at its full cash value by a uniform system of taxation.

The exemption does not operate, in fact, to segregate any certain definite class of telephone companies to the exclusion of all others.

The testimony discloses no reasonable basis for classification.

There can be no classification upon the basis of a difference in the service rendered. The proofs show, without contradiction, that the service rendered by the smaller companies to farmers along the highways is of precisely the same character as that furnished by the larger companies operating similar lines in similar localities. The same is true of the systems operated by the sub-license companies, by the village exchanges and by the switchboard associations. (Tarte, R. 92, 93, 123; Berry, R. 82, 94, 123; Melchers, R. 124-5).

There can be no classification upon the basis that the properties of the exempt companies are generally poor and the lines cheaply constructed, and that the contrary is true of the assessed companies. The testimony of both defendant's and complainants' witnesses show that in the case of the exempted properties, some are good and some are of poor construction, and that the same is true of the properties of many of the companies which are taxed. (Porter, R. 153, 154; McCormick, R. 155-157; Hurson, R. 194-5; Francis, R. 196).

There can be no classification upon the basis that mutual associations organized for purposes of economy and obtaining cheap service are exempted by the operation of the act, and other companies are not. The evidence shows that some mutual companies are taxed and others are not taxed. (Exhibits A and B, R. 51-64).

These exhibits also show that some corporations, partnerships and individuals operating telephone properties for profit, are taxed and others are not taxed. Exhibit A shows that in 1909 227 corporations, mutual associations, partnerships and individuals were taxed under the law as having gross receipts exceeding $500. Of these a large number were corporations, a number were mutual associations, some were partnerships, some were individuals, and in the case of some the organization does not clearly appear.

Exhibits B (R. 57-64) and 8 (R. 128-138) show that 435 companies were exempted. Of these 13 were corporations, 5 mutual associations, a few were partnerships and a few were individuals, but in the majority of cases the organization was not shown. It appears from Exhibit 8 that 19 of these companies were organized for profit. Most of the other companies exempted claim that they were not organized for profit, but concede that they were organized for pecuniary advantage of the members, either by securing economy of construction or cheap service, or both. It also appears that in some instances the mutual corporations rented telephones to some of their subscribers at a fixed charge. There is no controversy as to the manner in which the taxing officers applied the law, and the proofs show that the earnings of telephone companies are variable. Sometimes the company may receive under $500 in one year and over $500 in the next.

Mr. Parker, the board's representative, testified that the only test applied by the board in determining whether a proprty was to be taxed or not was whether the gross receipts exceeded $500; that the character of the organization, whether a corporation, mutual organization, partnership or individual, was not considered. (R. 144). That applying the rule some companies which were taxed in 1909 would not be taxed in 1910 because their gross receipts had fallen off, and in other cases companies which were not taxed in 1909 would be taxed in 1910 because of an increase in their gross receipts. (R. 120, 133, 193). That in the case of divided ownership, such as the Brooklyn Switchboard Association, the switchboard alone was taxed, and the various associations having lines running into the switchboard were exempt, but that if the ownership had been all in one organization the entire property would have been subject to taxation. (R. 144).

A list of the companies having gross receipts between $400 and $600 is, for purposes of illustration, hereto attached as Schedule A, and Parker's testimony is that if the gross receipts of any of the taxed companies fell below $500 they would be exempt, and if they increased to more than $500 the companies would be taxed.

This testimony of Parker, representing the Tax Commission, shows conclusively that the application of the exemption, as provided in the act, does not operate to segregate any particular class of properties, and that there is no reasonable or just basis for the exemption.

The most conspicuous example of the actual operation of the statute as applied by the State Board of Assessors is the case of the rural companies connecting with the Michigan State Telephone Company in 1909. These companies all operate under a standard form of contract, which includes

the sub-contract with the subscribers, and their business is of necessity carried on under the same conditions. Of these rural exchanges 28 were assessed because they had gross receipts in excess of $500, and 28 were exempted because they had gross receipts of $500 or under. (R. 67-68).

A graphic illustration of the application of the exemption is the case of the rural exchange operated by W. H. Cork. In 1909 his gross receipts were less than $500 and he was exempted. In 1910 his gross receipts exceeded $500 and he was taxed. The telephones on the lines running into his exchange are leased from the Michigan State Telephone Company at a rental of $3.00 a year, paid by Cork, and collected by him from the subscribers. If the ownership of these telephones was transferred to the subscribers so as to dispense with the rental Cork's income for 1910 would have fallen below $500 and everybody would be exempt. (R. 203-4).

The value of non-assessed properties is substantial, and not such as to justify its being ignored under an ad valorem system, under which all property according to its value is taxable.

In 1909 435 separate and distinct companies reporting for taxation were exempt. (Exhibits B and 8). The proofs show that this list is by no means complete and that there are many other companies which have not reported and have not yet been discovered by the taxing officers. Many of these exempted companies are roadway and farm lines. Others by combinations have formed systems which cover a considerable territory and constitute independent telephone systems differing only in size from the larger companies. The proofs do not show with certainty the number of telephones used in connection with these exempt companies, but there are unquestionably many thousands of them.

The average cost of constructing an ordinary roadway line, including telephones, is $30 per unit, and without the telephones about $20 per unit. (Tarte, R. 115; Berry, R. 100, 101, 109).

Mr. Parker, accountant for the Board of Assessors, has endeavored to make an estimate of the value of these exempted properties. His first estimate was that the properties were worth about $260,000. (R. 204). Subsequently he changed his testimony and increased his estimate to $296,027.34. (R. 206). He was compelled to admit upon cross-examination that there were many companies which were not included in his estimate; that since 1909 he had knowledge of 75 or 80 more companies whose value would have to be added to this figure (R. 207), and his attention was further called to a number of other companies which had not been taken

into consideration. (R. 208). His estimate was based upon the statements contained in the reports of the companies, some of which omit entirely any statement as to the number of telephones, and he admits that there may be considerably more than the figure named. (R. 209). This is also true as to his estimate of mileage. (R. 209).

This fact should also be taken into consideration, that if it becomes generally understood that by dividing up the ownership of telephone lines exemption from all taxation can be secured, it is altogether likely that in the future the number of smaller companies will be greatly increased; this in addition to the natural increase of the business which has all developed within the last few years.

In this valuation no account is taken of the intangible value which belongs to each of these lines. A subscriber upon a farmer's line, through the medium of his exchange and toll lines, is enabled to communicate throughout almost the entire country, and obtains precisely the same service as the subscribers to the larger companies. This intangible value, it is well settled, is a proper subject for taxation.

It is, therefore, clearly impossible to determine with any approach to accuracy the value of the properties which are exempted under this provision of the law, but it is certain that properties of very considerable value and which should bear their just share of taxation are exempted by the act.

II.

THE SECOND QUESTION IS, WHETHER THE ACT IS NOT UNCONSTITUTIONAL FOR THE REASON THAT THE OBJECT OF THE PROVISIONS OF THE ACT EXTENDING THE AD VALOREM SYSTEM OF TAXATION TO TELEGRAPH AND TELEPHONE COMPANIES, IS NOT EXPRESSED IN THE TITLE.

Prior to the passage of this act the properties of certain specified classes of corporations, such as railroads, express companies, etc., were, as before stated, taxed under the provisions of Act No. 282 of the Public Acts of 1905 of the State of Michigan. Under the provisions of the Constitution, as it then stood, the ad valorem method of taxation by a State Board of Assessors was applicable only to corporations. The constitutional provision then in force relating to this subject was Section 10 of Article XIV, which, so far as material, reads as follows:

> "The legislature may provide for the assessment of the property of *corporations* at its true cash value by a State Board of Assessors, and for the levying and collection of taxes thereon." (P. A. 1901, p. 404).

The scope of this provision was enlarged by Section 5 of Article X of the new Constitution of 1908, which we have quoted in the first part of this brief. That section authorizes the legislature to provide by law for the assessment at its true cash value by a State Board of Assessors of the property of corporations and the "property by whomsoever owned, operated or conducted," engaged in certain kinds of business, among which is the transmitting of messages by telephone or telegraph.

The act now under consideration was passed for the purpose of giving effect to these new provisions.

An examination of the body of this act discloses that it differs from the act of 1905 in the following particulars: *First*, certain substantial changes are made in the method of assessing express companies and car loaning companies, both of which were included in the act of 1905; *second*, the provisions of that act are extended to include the property of persons, co-partnerships and associations, as well as corporations engaged in the several kinds of business covered by the act of 1905; and *third*, the act is also broadened so as to include two new classes of business, viz: that of telegraph and telephone companies.

The title of the new act is as follows:

> "AN ACT to amend the title and Sections 1, 4, 5, 6, 8, 9, 10, 13, 14, 18 and 21 of Act No. 282 of the Public Acts of 1905, entitled 'An act to provide for the assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies and fast freight line companies, and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act."

There is nothing in the title to indicate an intention of broadening the act so as to include the property of persons, co-partnerships and associations, other than corporations carrying on business similar to that of the corporations taxed under the old act. Neither is there anything to indicate the further intention of adding new classes of business to those already taxed by the ad valorem method, so as to include telegraph and telephone companies.

Section 21, Article V, of the new constitution provides as follows:

> "No law shall embrace more than one object, *which shall be expressed in its title.*"

This provision is the same as in the old constitution. Its purpose is not only to inform the legislature, but the people as well, of the character of pending legislation. Mr. Justice Cooley, in speaking of constitutional provisions of this kind, says:

> "It may, therefore, be assumed as settled that the purpose of these provisions was, *first,* to prevent *hodge podge,* or 'log rolling' legislation; *second,* to prevent surprise or fraud upon the legislature by means of provisions in bills of which the titles gave no intimation, and which might, therefore, be overlooked and carelessly and unintentionally adopted; and, *third,* to fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon, by petition or otherwise, if they so desire."
>
> Cooley's Constitutional Limitations, 143.

The effect of the provision is to make the title a conclusive index of the legislative intent as to the scope of the proposed act.

> "As the legislature may make the title to an act as restrictive as they please, it is obvious that they may sometimes so frame it as to preclude many matters being included in the act which might with entire propriety have been embraced in one enactment with the matters indicated by the title, but which must now be excluded, because the title has been made unnecessarily restrictive. The courts cannot enlarge the scope of the title. They are vested with no dispensing power. The constitution has made the title the index to the legislative intent as to what shall have operation. It is no answer to say that title might have been made more comprehensive, if, in fact, the legislature had not seen fit to make it so."
>
> Cooley, J., Callaghan vs. Shipman, 59 Mich., 614.

It is, therefore, well settled that if the body of the act is within the title the legislation is valid, but when the provisions of the act are broader than the title, the act, to that extent at least, must fall, the test being that if what is introduced by way of amendment to an act might have been incorporated in the act under its original title, there is no violation of this section.

> Pratt Food Co. vs. Bird, 148 Mich., 634.
> Attorney General vs. Bolger, 128 Mich., 355.
> Depot Co. vs. Com'nr of Railroads, 118 Mich., 340.
> Detroit vs. Wayne Circuit Judge, 112 Mich., 319.

Tested by this rule, the act, so far as it is applicable to telegraph and telephone companies, clearly violates the provision of the constitution above referred to. The act of 1905, which is sought to be amended, applied only to railroad companies and certain other public service companies (naming them specifically), not including telegraph or telephone companies. The new act extended the provisions of the old law to telegraph and telephone companies, without naming them or referring to them in any way whatsoever in the title.

There are a number of cases in Michigan and elsewhere bearing on the question under discussion. It is unnecessary to discuss them at length, but the following cases decided by the Supreme Court of the state may be cited as illustrating the point:

Where the title of an act read as follows: "An act to amend Sections 5 and 21 of Act No. 97 of the session laws of 1879, as amended, being Sections 6539 and 6555 of Howell's Annotated Statutes of Michigan of 1882, relative to filling vacancies in the Superior Court of Detroit," it was held that a section providing for the removal of causes and determining the manner in which they should be tried was not within the title.

Callaghan vs. Chipman, 59 Mich., 610.

Where an act was entitled "An act making an appropriation of state swamp lands to aid the County of Gratiot in improving the channel of Maple river and to authorize a tax to complete the same," it was held that the section of the act authorizing the improvement of Maple river within the County of Clinton was void.

Wilcox vs. Paddock, 65 Mich., 24.

Where the title of an act amended read as follows: "An act to regulate the taking and catching of fish in the inland lakes of the state," it was held that the act could not be so amended as to extend the statute so as to include other inland waters than lakes. Mr. Justice Grant, in the opinion, says:

> "The title was defective in that it did not express the object of the bill. (Section 20, Article IV, Constitution). The title gave no notice to the legislators or to the people that the bill provided that the provisions of the original act should be extended to other subjects. The natural inference to be drawn from the title is that the proposed amendment affected only lakes. The title should have contained appropriate words showing that the object was to include other waters."

Fish vs. Stockdale, 111 Mich., 46.

The authorities both in Michigan and elsewhere are fully discussed in the case of *Hauck*, 70 Mich., 396. It is there held that where the object of the act is to *prohibit* the manufacture and sale of liquors, that object is not expressed in a title to *regulate* the same subject.

The latest application of this rule is found in the case of *Bresler vs. Delray Real Estate & Investment Co.*, 156 Mich., 3. The title of the act under consideration was "An act to amend Section 1 of Chapter 163, Compiled Laws of 1871, being Section 6025 of Howell's Annotated Statutes, relative to the sale of lands for the payment of debts by executors, administrators and guardians."

Section 1 of the act not only provided for the sale of lands to pay debts, but also "whenever it shall be made to appear to the Probate Court that it is necessary for the preservation of the estate or to prevent a sacrifice thereof, or for the best interests of all concerned."

The point was not raised by either party to the suit, but the court, of its own motion, raised the question and held that, to the extent that the act authorized the sale of lands for any other purpose than that indicated in the title, it was clearly within the prohibition of Section 20, Artcle IV, of the Constitution then in force.

The fact that the title of the act indicates an intention of amending the title, as well as the body of the old act, without stating in what respect it is proposed to change it does not help the situation. If there is to be any new subject added either to the body or the title of the old act which is not within the original title, that purpose must be expressed in the title of the amending act in order that the legislature and the public may be informed.

Schedule B, hereto attached, contains the official record of this bill through the house and senate, and illustrates how impossible it would have been for any one not familiar with the body of the bill to understand that the purpose of the bill was to tax telegraph and telephone companies, as well as the other companies which prior to that time had been subject to taxation under the ad valorem system of taxation.

If this Court should hold that the federal question involved in this case was rightly decided by the Court below, then the question of whether the title of the act conforms to the Michigan Constitution, becomes one for an adjudication by this Court.

We respectfully submit that the decree below should be reversed and one entered granting the relief prayed for.

THOMAS P. BRADFIELD and
JACOB KLEINHANS,
Counsel for Appellants.

SCHEDULE A.

GROSS RECEIPTS REPORTED OVER $400 AND UNDER $600.

Compiled from Exhibits A and B. (R. 50-64).

Exhibit A.

ASSESSED.

Alcona County Mutual Telephone Co. of Nacoda, a partnership,	$505.00
Chambers Telephone Co., of Fostoria, a corporation,	600.00
Chikaming & Weesaw Telephone Co., of Three Oaks, a sub-licensee	502.09
Cooper Branch Telephone Co., Cassopolis,	600.00
Farmers' Independent Telephone Co., of Temperance, a mutual association,	552.35
Farmers' Mutual Telephone Co., of Elmdale,	546.00
C. R. Fowler of Jackson	518.00
Gaines Farmers' Mutual Telephone Co., of Gaines,	600.00
Hanover Telephone Co., of Hanover, an association,	550.00
Lacey Mutual Telephone Co., of Assyria, R. No. 1,	600.00
Litchfield Farmers' Mutual Telephone Co.,	519.00
E. E. Mosgrove of Fulton, a sub-licensee, exceeds	500.00
Mutual Telephone Co., of Lapeer County, Imlay,	

Exhibit B.

EXEMPT.

Gross Receipts over $400:

Bridgman Telephone Co., of Bridgman	$400.00
Campbell Bros., of Cloverdale, sub-licensees,	472.59
Citizens' Telephone Co., of Berrien County, of New Troy, mutual corporation,	414.00
S. D. Coe of Romeo, an individual,	420.00
East Saugatuck Telephone Co., of Holland, No. 8,	435.65
Freemont North Western of Freemont, No. 8,	500.00
Gladwin County Telephone Co., a corporation,	410.00
Globeville Farmers' Mutual, a corporation,	450.00
Hollaway Telephone Co., a corporation,	489.07
Ironwood Rural Telephone Co.,	515.00
Lyndilla Telephone Co., of Gregory, No. 2, a corporation	473.60
Mason & Okemos Telephone Co., of Okemos,	408.00
North Eastern Telephone Co., of Mio,	500.00
Ovid Mutual Telephone Co., of Shepardville,	416.31

City, (part of yr.).	301.80
H. A. Plumbey of Metamora, an individual sub-licensee,	528.00
Readmond Township Telephone Co.,....	516.49
Sand Creek Telephone Co., ...	600.00
Smyrna Telephone Co., ...	517.93
H. E. Soper of Lun, a sub-licensee, ...	580.67
Spinks'Corners Telephone Co., a corporation, ...	524.50

SCHEDULE B.

OFFICIAL REPORT OF SENATE ENROLLED ACT. No. 19.

January 14, 1909, Mr. Fairbanks introduced in the Senate, Senate Bill No. 22, entitled:

A Bill to amend the title and Sections 1, 4, 5, 6, 8, 9, 10, 13, 14, 18 and 21, of Act No. 282, of Public Acts of 1905, entitled:

"An Act to provide for the assessment of the property of railroad companies and union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, and for the levy of taxes thereon by a State Board of Assessors and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this Act."

The Bill was read a first and second time *by its title,* ordered printed and referred to the Committee on Taxation.

On the same day Mr. Anhut introduced Senate Bill No. 31, entitled:

(This Title is the same as Senate Bill No. 22, except that it does not seek to amend Sections 1 and 21 of Act 282, Public Acts, 1905.)

The Bill was read a first and second time *by its title,* ordered printed and referred to the Committee on Taxation.

On March 24th, the Committee on Taxation reports Senate Bill No. 22, entitled:

(Title as above given), with an accompanying substitute therefor, having the same title.

The report was accepted, the committee discharged, substitute adopted, and the Bill referred to the Committee of the Whole on the General Order.

On March 25th, Mr. Fairbanks, by unanimous consent, moved to discharge the Committee of the Whole from the further consideration of Senate Substitute for Senate Bills Nos. 30 and 31, entitled:

(Same title as Senate Bill No. 22.)

Motion prevailed, and Mr. Fairbanks then moved that the bill be placed at the head of the special order for that day. The motion prevailed and the Committee of the Whole reported out the Senate Substitute *by title,* without amendments, and recommended its passage. On the same day, the Bill was read a third time and unanimously passed.

On March 26th, the Bill, *describing it by its title,* was transmitted to the House, read a first and second time, *by its title,* and referred to the Committee on General Taxation.

On April 13, House Bill, No. 15, *having the same title* as the Senate Substitute above, was made a special order for consideration, Wednesday, Arpil 14th.

Mr. Crampton moved, as a substitute, that the Committee on General Taxation be discharged from further consideration of the Senate Substitute. The motion did not prevail. Mr. Crampton, explaining his vote, stated that the purpose of the Senate Bill was to provide for equitable taxation of telephone and telegraph companies. This is the first instance on the journals of the Legislature where the purpose of the Bill was in any way stated.

On April 14th, the Committee on General Taxation reported out the Senate Substitute, *by its title* without recommendation. The Bill was referred to the Committee of the Whole and made a special order for consideration at 2:30 on that day. At 2.30 the Senate Substitute was reported out by the Committee of the Whole, placed upon immediate passage, read a third time and passed. At the same time, House Bill No. 15, above noted, was laid on the table. After the passage of the Senate Substitute, Mr. Burdick announced that he voted for the Bill because he believed it to be the only Bill that the House would permit, to make fair and equitable assessment of telephone and telegraph property.

On April 15th, the Senate Substitute was returned to the Senate—the Bill *being described by its title.*

On April 29th, the Governor reported to the Senate that he had on that day, signed and deposited in the office of the and Senate Bill No. 31, being enrolled Act No. 19, *describing it by its title.*

Secretary of State, Senate Substitute for Senate Bill No. 22

INDEX.

PAGE

Statement of Facts 1

Argument 10

FIRST: Statement of Federal Question 10

The Fourteenth Amendment in General 10

Limitations upon Right of Classification 11

Elements of Difference between the Classes 12

I.—1. Differences between Taxed and Exempted Classes-Taxed Class Consists of Commercial or Profit-Making Companies, Exempted Class of Co-operative or Non-profit-making Companies—this permits Separate Treatment 14

2. In Similar Cases Classifications have been Sustained 18

3. Distinctions growing out of Fact that Farmers' Companies do not operate Telephone Lines 20

4. Variations from the Rule of Exemption—Exempting only Non-Profit-Making Institutions, so small as not to amount to real Discrimination 21

II.—Distinctions in use of taxed and exempted properties—the public service or non-public service as a basis of classification 26

III.—Exemption of the smaller Members of a Class Permitted 29

IV.—Propriety of Classification based on Earning Capacity 30

V.—Property which cannot be profitably Taxed, may be Exempted 33

VI.—Classification may be based upon Corporate Character 40
VII.—Statute does not classify on Character of Ownership 40
VIII.—The Right to make Exemptions 41
IX.—Appellant's Brief 42

SECOND: The objection under Fourteenth Amendment must come from those Injured by Classification 46

THIRD: The Sufficiency of the Title 47
I.—Purpose of the Constitutional Provision regarding Titles 47
II.—Rules of Construction in applying Constitutional Provision regarding Titles 49
III.—Title to the Act in Question 51
IV.—Complainants' Argument as to Title Answered 53
V.—Generality of the Title no Objection 55
VI.—Title gives Notice of Intent to Amend 57
VII.—Complainants' Objection Hypercritical 58
VIII.—Title in Question gives Sufficient Notice 58
IX.—Legislative Practice Establishes Validity of this Title 60

FOURTH: Complainants not entitled to Relief in Equity—Complete and Adequate Remedy at Law Exists 63

APPENDIX I.—Resume of cases, arising under Fourteenth Amendment ..... *App.* 1
I.—Meaning of Guaranty of Fourteenth Amendment ..... *App.* 1
II.—Classification permitted by Amendment ..... *App.* 5
III.—What the Amendment requires in Classification ..... *App* 12

Absolute Equality, or classification based upon Scientific or Mathematical Division of the Classes, neither Requisite nor Necessary ..... *App.* 13

IV.—Principles established as Governing in Application of Amendment ..... *App.* 19

1. A Special Rule Applicable to Cases of Taxation ..... *App.* 19
2. Extent of Authority to make Exemptions ..... *App.* 21
3. Strong Presumptions Favor Validity ..... *App.* 26
4. The Courts Reluctant to Interfere with Taxing Systems ..... *App.* 29
5. Extent of the Legislative Discretion ..... *App.* 30
6. The Discrimination must be against those Complaining ..... *App.* 35
7. Effect of Partial Invalidity ..... *App.* 39

V.—Specific Instances of Classification Sustained ..... *App.* 43

1. Exemptions which have been held Proper ..... *App.* 43
2. Classifications with Reference to Earnings, Dividends, Volume of Business or Size Sustained ..... *App.* 44
3. Other instances of Classification Sustained ..... *App.* 45

VI.—A few recognized Grounds of Classification which Sustain that here made ..... *App.* 47

1. Practical Considerations—the Small Institution which it would not be Profitable to Tax, may be Exempted ..... *App.* 47
2. Classification Separating between mutual and Profit-making Institutions, Sustained ..... *App.* 48
3. Distinctions between Exempted and Taxed Companies ..... *App.* 48

4. Classification based upon Earning Ability ..... *App.* 50
5. Classification based upon Size ..... *App.* 54
6. The Rural and Private Nature of Exempted Companies as affecting Right to Classify ..... *App.* 55
7. Exempted lines not serving Outsiders, not in Position to Diffuse the Tax ..... *App.* 56
VII.—Corporate Character of Complainants ..... *App.* 57
VIII.—Cases Denying Right to make Classification for Taxation ..... *App.* 61

APPENDIX II.—Testimony as to Value of Exempted Companies ..... *App.* 69

APPENDIX III.—Tabulations showing Character, Value and Extent of Exempted Companies ..... *App.* 80
Table showing all exempted lines ..... *App.* 82
Table showing every exempted line not expressly admitted by Complainants to be a Farmer's Mutual, Organized Solely to Secure Telephones at Cheap Rental ..... *App.* 100
Table showing further Classification of 58 Companies listed in preceding Table ..... *App.* 101

INDEX OF CASES.

	Brief.	App.
Adams Express Co. vs. Kentucky (166 U. S. 171)	27	
Ah Sin vs. Wittman (198 U. S. 500)		27
Allen vs. Pullman's Palace Car Co. (139 U. S. 658)	64	
Allgeyer vs. Louisiana (165 U. S. 578)		54
Ambler vs. Choteau (107 U. S. 586)	70	
American Sugar Refining Co. vs. Louisiana, (179 U. S. 89)	18	9, 19, 20, 43, 55
Arkansas Building & Loan Association vs. Madden (175 U. S. 269)	64, 66, 75, 77	
Armour Packing Co. vs. Lacy (200 U. S. 226)		43
Atchison, Topeka & Santa Fe vs. Matthews (174 U S. 96)		11, 28, 61
Atchison, Topeka & Santa Fe vs. O'Connor (223 U. S. 280)	75	
Attorney General vs. Glaser (102 Mich. 405)	61	
Attorney General vs. Amos (60 Mich. 372)	57	
Atwell vs. Zeluff (26 Mich. 118)	71, 74	
Babcock vs. Township of Beaver Creek (64 Mich. 601)	71	
Ballard vs. Hunter (204 U. S. 241)		46
Baltimore & Ohio vs. Supervisors (3 West Va. 319)	33	
Barbier vs. Connolly (113 U. S. 27)		5
Barron vs. Robbins (22 Mich. 34)	68	
Beers vs. Glynn (211 U. S. 477)		25
Bell's Gap vs. Pennsylvania (134 U. S. 232)	35	4, 7, 46
Belo vs. Commissioners (82 N. C. 415)	33	
Berea College vs. Kentucky (211 U. S. 45)		41, 57
Berrien Springs Water-Power Co. vs. Circuit Judge (133 Mich. 48)	16	
Biggs vs. McBride (17 Ore. 640)	61	
Billings vs. Illinois, (188 U. S. 97)		21,45
Bissell vs. Wayne Probate Judge (58 Mich. 237		48
Blackwood vs. VanVleet (11 Mich. 252)	68	

	Brief.	App.
Board of Education vs. Board of Assessors (133 Mich. 116)	61	
Board of Education vs. Illinois (203 U. S. 553)	25, 44	
Board of Supervisors vs. Auditor General (65 Mich. 408)	55	26,
Boise Artesian Water Co. vs. Boise City (213 U. S. 276)	64	
Boyer vs. Boyer (113 U. S. 689)	24	
Brass vs. N. Dakota (153 U. S. 391)	27	
Braxton County Court vs. West Virginia (208 U. S. 192)	38	
Brown, Ex Parte, (48 Fed. 435)	43	
Brown-Forman Co. vs. Kentucky (217 U. S. 563)	32	7, 46
Budd vs. New York (143 U. S. 517)	27	
Butcher's Union vs. Crescent City, etc, Co. (111 U. S. 746)	54	
Buzard vs. Houston (119 U. S. 347)	70	
Byerly vs. Humphrey (95 N. C. 151)	67	
Cahen vs. Brewster (203 U. S. 543)	29	
Callaghan vs. Chipman (59 Mich. 610)	59	
Canal St. Gravel-Road Co. vs. Paas (95 Mich. 372)	56	
Capital City Dairy Co. vs. Ohio (183 U. S. 238)	44	
Cargill Co. vs. Minnesota (180 U. S. 452)	44	
Castro vs. DeUriate (16 Fed. 93)	61	
Central of New Jersey vs. Board of Assessors (75 N. J. L. 120)	43	
Central Lumber Co. vs. South Dakota (— U. S.—; 33 S. C. R. 66)	11, 25	
Central Pacific vs. Evans (111 Fed. 71)	30	
Charlotte, Columbia & Augusta vs. Gibbes (142 U. S. 386)	27, 30,	44
Chesapeake & Ohio vs. Miller (114 U. S. 176)	33, 41	
Chicago, Burlington & Quincy vs. Iowa (94 U. S. 155)	32, 45	
Chicago, Burlington & Quincy vs. McGuire (219 U. S. 549)	35	
Chicago vs. Sturges (222 U. S. 313)	46	
Chicago & Grand Trunk vs. Wellman (143 U. S. 339)	31	45
City of Beatrice vs. Edminson (117 Fed. 427)	53	
City of Henderson vs. McCullagh (89 Ken. 448)	50	

	Brief.	App.
Clark vs. Kansas City (176 U. S. 114)		11, 46
Clark vs. Titusville (184 U. S. 329)	30	45, 53
Cobb vs. Commissioners (122 N. C. 307)	29	43
Collins vs. Texas (223 U. S. 288)		38
Common Council of Detroit vs. Schmid (128 Mich. 379)	56, 59	
Comstock vs. Superior Court Judge (39 Mich. 195)	59	
Connolly vs. Union Sewer Pipe Co. (184 U. S. 540)		3, 12, 19, 24, 30, 32, 61, 62
Consolidated Rendering Co. vs. Vermont (207 U. S. 541)		45
Cook vs. Marshall County, (196 U. S. 261)	21, 46, 62	
Cook vs. State, Etc., Prosecutors (33 N. J. L. 474)	33	
Cotting vs. Kansas City Stockyards Co. (183 U. S. 79)		61, 62
Cox vs. Texas (202 U. S. 446)		43, 56
Cox vs. Welcher (68 Mich. 263)	71, 73	
Cronin vs. Denver (192 U. S. 115)		37
Crosby vs. Hutchinson (126 Mich. 56)	68	
Cruickshank vs. Bidwell (176 U. S. 73)	68	
Darnell vs. Indiana (— U. S. —; 33 S. C. R. 120)	40	
Delaware R. R. Tax Case (18 Wall. 206)		23
Detroit vs. Chapin (108 Mich. 136)	60	
District of Columbia vs. Brooke (214 U. S. 138)	36	14, 25, 46, 48
Douglas County vs. Stone (110 Fed. 812)	69	
Dow vs. Beidelman (125 U. S. 680)	30	45, 54
Dows vs. Chicago (11 Wall. 108)	64, 69	
Dyker Meadow Land, Etc., Co. vs. Cook (38 N. Y. S. 222)	54	
Elliot vs. Swartwout (10 Peters 137)	76	
Engel vs. O'Malley (219 U. S. 128)	30	38, 45, 55
Erb vs. Morasch (177 U. S. 584)		27, 44
Fargo vs. Hart (193 U. S. 490)	77	
Ficklen vs. Shelby County (145 U. S. 1)		54
Fidelity Mutual Life Association vs. Mettler (185 U. S. 308)	18	45, 48

	Brief.	App.
Field vs. Barber Asphalt Paving Co. (194 U. S. 618)	36	46, 48
First National Bank vs. Ayers (160 U. S. 660)	24	
First National Bank vs. Watkins (21 Mich. 483)	71	
Florida Central vs. Reynolds (183 U. S. 471)	35, 37	10, 23, 30
Foster vs. Hart Consolidated Mining Co. (— Colo. —; 122 Pac. 48)	32	
Georgia R. R. & Banking Co. vs. Smith (128 U. S. 174)	27	
Giozza vs. Tierman (148 U. S. 657)		8
Graham vs. West Virginia (224 U. S. 616)		47
Grand Chute vs. Winegar (15 Wall. 373)	71	
Grand Rapids vs. Superior Court Judge (93 Mich. 469)	55	
Griffth vs. Connecticut (218 U. S. 563)		35
Grimm vs. Secretary of State (137 Mich. 134)	58	
Gulf, Colorado & Santa Fe vs. Ellis (165 U. S. 150)	11	12
Hagenbuch vs. Howard (34 Mich. 1)	71	
Hall vs. Burlingame (88 Mich. 438)	50	
Hammond Packing Co. vs. Arkansas (212 U. S. 322)		45
Hart vs. McElroy (72 Mich. 446)	61	
Hatch vs. Reardon (204 U. S. 152)	36, 46	38, 41, 43, 47
Hauck, In re, (70 Mich. 396)	48, 50	
Heath & Milligan vs. Worst (207 U. S. 338)		26, 31
Henderson Bridge Co. vs. Henderson(173 U. S. 592)	22	29
Henry vs. Gregory (29 Mich. 67)	75	
Hipp vs. Babin (19 Howard 271)	67	
Hoge vs. Railroad Company (99 U. S. 348)		23
Holden vs. Hardy, (169 U. S. 366)		54
Home Ins. Co. vs. New York (134 U. S. 594)	30	7, 39, 44
Hovey vs. State (119 Ind. 386)	61	
Indiana Manufacturing Co. vs. Koehne (188 U. S. 681)	64	
Inkster vs. Carver (16 Mich. 484)	49	
Interstate Con. Street Ry. Co. vs. Massachusetts (207 U. S. 79)		16, 38
Iowa Mutual Tornado Ins. Association vs. Gilbertson (129 Iowa 658)		44, 48

	Brief.	App.
Kansas vs. Western Union Telg. Co. (216 U. S. 1)		46
Kansas City Exposition Driving Park vs. Kansas City (174 Mo. 425)	20	
Keeney vs. New York (222 U. S. 525)	11	38, 44
Kidd vs. Alabama (188 U. S. 730, 733)		33, 46
Killian vs. Ebbinghaus (110 U. S. 568)	67	
King vs. Mullins (171 U. S. 404)	22, 29	30, 43, 50
Knowlton vs. Moore (178 U. S. 41)		45
Knoxville & Ohio vs. Hicks (68 Tenn. (9 Baxter) 442)	33	
Kramer vs. Cohn (119 U. S. 355)	70	
Kurtz vs. People (33 Mich. 278)	48	
Laing vs. Township of Forest (139 Mich. 159)	71	
Lampasas vs. Bell (180 U. S. 276)		36
Lee vs. New Jersey (207 U. S. 67)		38
Lewis vs. Cocks (23 Wall. 466)	68	
Lindsley vs. National Carbonic Gas Co. (220 U. S. 61)		17, 38, 46
Louisville & Nashville vs. Melton (218 U. S. 36)		17, 35, 46, 47
Louisville Tobacco Warehouse Co. vs. Commonwealth (106 Ken. 165)	27	
Magoun vs. Illinois Trust & Savings Bank (170 U. S. 283)	30	8, 12, 14 19, 33, 45, 51, 53
Maine vs. Grand Trunk (142 U. S. 217)		44
Marchant vs. Penn. Railroad (153 U. S. 380)		45
Martin vs. District of Columbia (205 U. S. 135)		16
Marvin vs. Trout (199 U. S. 212)		37
McLean vs. Arkansas (211 U. S. 539)	29	44
Mears vs. Howarth (34 Mich. 19)	71	
Memphis & Little Rock vs. Commissioners (112 U. S. 609)	41	
Mercantile Bank vs. New York (121 U. S. 138)	24	16
Merchants, Etc., Bank vs. Pennsylvania (167 U. S. 461)		7, 13, 25
Metropolitan Street Ry. Co. vs. New York (199 U. S. 1)		23, 43
Michigan Central vs. Powers (201 U. S. 245)	18, 77	10, 33, 44

	Brief.	App.
Minnesota Iron Co. vs. Kline (199 U. S. 593)		18, 44
Missouri vs. Dockery (191 U. S. 165)		24
Missouri, Kansas & Texas vs. May (194 U. S. 267)		28, 31
Missouri Pacific vs. Mackey (127 U. S. 205)		6, 46
Mobile & Ohio vs. Mosley (52 Miss. 127)	33	
Mobile & Ohio vs. Tennessee (153 U. S. 486)	32	
Mobile, Jackson & Kansas City vs. Turnispeed (219 U. S. 35)		46
Montgomery vs. Wyman (130 Ill. 17)		49
Montclair vs. Ramsdell (107 U. S. 147)	47	
Morgan vs. Louisiana (93 U. S. 217)	41	
Munday vs. Van Hoose (104 Ga. 292)		49
Munn vs. Illinois (94 U. S. 113)	27	
Murphy vs. California (225 U. S. 623)		38
Natchez, Jackson & Columbus vs. Lambert (70 Miss. 779)	33	
New York Central vs. United States (212 U. S. 481)		41
New York, New Haven & Hartford vs. New York (165 U. S. 628)	29	44, 54
Nicol vs. Ames (173 U. S. 509)		12, 43
North Carolina R. R. Co. vs. Commissioners (77 N. C. 4)	33	
Ogden City vs. Armstrong (168 U. S. 224)	70	
Ohio vs. Dollison (194 U. S. 445)		44
Orient Ins. Co. vs. Daggs (172 U. S. 557)		13, 31, 45
Ozan Lumber Co. vs. Union County Bank (207 U. S. 251)	25	15, 44
Pacific Express Co. vs. Seibert (142 U. S. 339)	18, 64	7, 43, 48
Peacock & Co. v. Pratt (121 Fed. 772)	20	
Pembina Mining Co. vs. Pennsylvania (125 U. S. 181)		4
People vs. Auditor General (7 Mich. 84)		26
People vs. Henderson (12 Colo. 369)	32	
People vs. Howard (73 Mich. 10)	49, 55, 59	
People vs. Mahaney (13 Mich. 481)	47	
People vs. Maynard (15 Mich. 463)	61	
People vs. Parvin (74 Calif. 549; 14 Pac. 783)	53	
People vs. Ravenswood Hospital (238 Ill. 137)		50

	Brief.	App.
People vs. Ryan (138 Ill. 263)		50
People vs. State Ins. Company (19 Mich. 392)	49, 55	
Pere Marquette vs. Ludington (133 Mich. 397)	71	
Petit vs. Minnesota (177 U. S. 164)		30
Picard vs. East Tennessee, Virginia & Georgia (130 U. S. 637)	41	
Pittsburgh, C. C. & St. L. vs. Board of Public Works (172 U. S. 32)	64, 69	
Postal Telegraph Co. vs. Adams (155 U. S. 688)	30	39, 45, 53, 54
Providence Bank vs. Billings (4 Peters 514)		33
Provident Institution for Savings vs. Malone (221 U. S. 660)		46
Quong Wing vs. Kirkendall (223 U. S. 59)	30	44
Railroad Company vs. County of Hamblen (102 U. S. 273)	33	
Raleigh & Gaston vs. Commissioners (87 N. C. 414)	33	
Raleigh & Gaston vs. Reid (13 Wall. 269)	33	
Raymond vs. Chicago Union Traction Co. (207 U. S. 20)	70	
Richmond & Danville vs. Commissioners (74 N. C. 506)	33	
Richmond & Danville vs. Commissioners (84 N. C. 504)	33	
Root vs. Railroad Company (105 U. S. 189)	68	
Ross vs. Aguirre (191 U. S. 60)	47	
Ryerson vs. Utley (16 Mich. 269)	50	
St. John vs. New York (201 U. S. 633)		45, 47, 56
St. Louis & Iron Mountain vs. Paul (173 U. S. 404,		60
St. Louis Consolidated Coal Co. vs. Illinois (185 U. S. 203)	29	44, 62
San Diego Land & Town Co. vs. National City (174 U. S. 739)		30
Savannah, Etc., Railway vs. Savannah (198 U. S. 392)		43
Sawyer vs. Dooley (21 Nevada 390)		47
Schmidinger vs. Chicago (— U. S. —: 33 S. C. R. 182)	28	

	Brief.	App.
Seaboard Air Line vs. Seegers (207 U. S. 73)	28	46
Second Employers' Liability Cases (223 U. S. 1)		46
Shelton vs. Pratt (139 U. S. 591)	64, 66, 75	
Shelvin-Carpenter Co. vs. Minnesota (218 U. S. 57)	48	
Smiley vs. Kansas (196 U. S. 447)		37
Smith vs. First National Bank (17 Mich. 478)	72	
Soukup vs. Van Dyke (109 Mich. 679)	56, 57	
Southern Ry. Co. vs. Greene (216 U. S. 400)		4, 44
Southwestern Oil Co. vs. Texas (217 U. S. 114)		34, 46
Spreckles Sugar Refining Co. vs. McClain (192 U. S. 397)		25
Standard Oil Co. vs. Tennessee (217 U. S. 413)		46
State vs. Minton (23 N. J. L. 529)	33	
State vs. Norwich & Worcester (30 Conn. 290)	33	
State Board of Assessors vs. Morris & Essex R. R. Co. (49 N. J. L. 193)	33	
State Freight Tax Case (15 Wall. 232)		39
State Railroad Tax Cases (92 U. S. 575)	69	
Stuart vs. Laird (1 Cranch 299)	61	
Supervisors vs. Stanley (105 U. S. 305)		38
Tennessee vs. Sneed (96 U. S. 69)	66	
Thomas vs. Gay (169 U. S. 264)		32
Thompson vs. City of Detroit (114 Mich. 502)	71, 73	
Thompson vs. Railroad Companies (6 Wall. 134)	67	
Tomlinson vs. Branch (15 Wall. 460)		23
Travelers Ins. Co. vs. Connecticut (185 U. S. 364)	24, 36, 38	18, 46
Trustees vs. City of Louisville (100 Ken. 470)		50
Tullis vs. Lake Erie & Pennsylvania (175 U. S. 348)		40
Tyler vs. Savage (143 U. S. 79)	71	
Union Pacific vs. Cheyenne (113 U. S. 516)	70	
United States vs. Wilson (118 U. S. 86)	67	
Walker vs. Walker (63 N. H. 321)	67	
Waters-Pierce Oil Co. vs. Texas (177 U. S. 28)		36
Watson vs. Maryland (218 U. S. 173)		35

	Brief.	App.
Watson vs. Sutherland (5 Wall. 74)	67	
Wehrman vs. Conklin (155 U. S. 314)	67	
Welch vs. Swasey (214 U. S. 91)		27
Western Union Telg. Co. vs. Gottlieb (190 U. S. 412)	77	
Western Union Telg. Co. vs. Indiana (165 U. S. 304)	10	8
Western Union Telg. Co. vs. Milling Co. (218 U. S. 406)		14
Whitehead vs. Shattuck (138 U. S. 146)	67	
Whitney vs. Port Huron (88 Mich. 268)	71, 74	
Willcox vs. Consolidated Gas Co. (212 U. S. 19)		38
Williams vs. Arkansas (217 U. S. 79)		46
Williams vs. Walsh (222 U. S. 415)		38
Winnebago, The, (205 U. S. 354)		38
Woodmere Cemetery Assoc. vs. Springwells (130 Mich. 466)	71	
Yazoo & Mississippi Valley vs. Adams (180 U. S. 1)	33	
Youngblood vs. Sexton (32 Mich. 406)	64	

Supreme Court of the United States.

THE CITIZENS TELEPHONE COMPANY,
Complainant and Appellant,
vs.
ORAMEL B. FULLER, Auditor General
of the State of Michigan,
Defendant and Appellee.

October Term, 1912.
No. 284.
(22,657)

THE CITIZENS TELEPHONE COMPANY
of Jackson,
Complainant and Appellant,
vs.
ORAMEL B. FULLER, Auditor General
of the State of Michigan,
Defendant and Appellee.

October Term, 1912.
No. 285.
(22,658)

Brief for Defendant and Appellee.

STATEMENT OF FACTS.

The complainants are corporations doing general telephone business. Their lines, property and business extend over a large portion of the state, with exchanges serving many subscribers in the principal cities reached by their lines. The

details of the property of complainants appear in the *Record pp.* 198-199, 80, 90.

Previous to the passage of Act 49 of 1909, which forms the basis of these cases, all Michigan telephone companies were subjected to taxation at a specific rate upon their gross earnings under Act 179 of 1899.

By act 49 of 1909, their property became subject to assessment by the State Board of Assessors and to tax thereon at the average rate throughout the state for state, county, township, school and municipal purposes.

The taxing act includes all telephone companies doing business in the state except such small companies as are exempted by the proviso of Section 4, as follows:

> "Provided that the property of telegraph and telephone companies whose gross receipts within this state for the year ending June 30th, do not exceed five hundred dollars shall be exempt from taxation."

Upon the taking effect of this act in Michigan, there were two classes of telephone lines, viz:

(*a*) That class, to which complainants belong, made up of the property engaged in general telephone business for profit, and

(*b*) That class made up of lines of telephone constructed and owned by farmers or mutual associations of farmers (sometimes incorporated), which come into existence and construct and maintain their lines for the purpose of furnishing to themselves, and to those associated with them, the service of some regular telephone company engaged in business for profit; which were designed to secure to their members cheap telephone rentals; which were not designed, conducted or operated so as to earn dividends or do general telephone business, but whose sole income consists of assessments against their members to meet the expense of construction and maintenance; which do not, except in rare instances, operate or carry on the service over the line, and from whose ownership of telephone lines there is no profit, except the mutual advantage to their members in securing to themselves telephone service in rural districts at reduced rentals.

The class taxed: Those telephone companies whose gross receipts exceed five hundred dollars annually, and to which the complainants and practically all telephone companies in Michigan of the same character belong, is made up largely of incorporated telephone companies doing general telephone business for profit. (*Rec. p.* 51.)

The class exempted: Those telephone lines whose gross annual earnings do not exceed five hundred dollars per annum, is made up, without material exception, of those telephone companies, mutual or co-operative in character, designed, constructed, owned and maintained by farmers to bring to themselves the service of some commercial telephone company. (*Rec. p.* 57; *Appendix III.*)

The non-taxed lines divide themselves into three types as described by Mr. Berry: *(a)* sub-license; *(b)* rural; *(c)* roadway. (*Rec. pp.* 65-80, 176-177.)

(a) Sub-license: The sub-license type is evidently an independent line or exchange system, connecting with one of the complainants. (*Rec. p.* 65.) In the last table of *Appendix III*, every non-taxed sub-license company is treated and its character shown. From this it is indicated that but 17 to 20 with small property, a number of whom came into existence after the law was passed, are profit-making companies. The larger portion of them are rural or roadway, or made up of a combination of roadways.

(b) Rural: The rural contract is set forth in *Record, pp.* 75-78. This comprises a switch board, leased by a profit-making company to a rural manager, who operates the board for such roadways as may desire to run into it. The roadways connected with a rural are constructed and owned by the farmer in the same way as other roadways.

(c) Roadway: The roadway is a line owned and constructed by farmers, connecting with, and receiving service from an existing exchange of a profit-making company, or of a rural exchange manager. The roadway contract is set forth in *Record, pp.* 78-80.

From the nature of the organization, business and operations of these mutual or co-operative farmers' lines it is doubtful whether they can be considered as telephone companies, or whether the terms of act 49 of 1909, in imposing taxes upon "telephone companies" would include them. Made up as they are of associations of farmers, usually voluntary without corporate organization (*Rec. pp.* 29, 57, 74, 95-98), the only things they own are the pole lines and wires. The usual plan of their operation is for the association to make a contract with some company engaged in general telephone business under which that company furnishes to the farmers' line exchange service, often including the telephone instruments or subscribers' station equipment at a fixed rental per year. (*Rec. pp.* 81, 82, 92, 93, 141, 152.)

The full extent of the business carried on by such associations embracing all of their operations, is that, they own the line, make the contract described, collect from their members the rental fee to be paid to the general telephone company which operates the line, maintain the line, and assess the cost of maintenance against the several members.

The members upon the farmers' line appear in the directory of the general telephone company in the list of its subscribers, and are served in identically the same way as the other subscribers of such company. (*Rec. pp.* 82, 122, 123, 125.)

Preliminary to its asessment for 1909, the State Board required from all institutions or persons owning in whole or in part, a telephone line, which it could discover, the reports required by statute.

The following indicates in general the extent of the taxed and untaxed property in 1909:

The number of companies or lines reporting to the State Board was 659. The board has since discovered or received reports from a number of other lines, and certain others appear by complainants' proof, though the extent, character or value of their property or operations is not shown.

Of the number reporting to the State Board, 224 were assessed for 1909, the aggregate assessment being $20,948,375, and the aggregate tax, $443,072.30; the remainder were not assessed, either because they were not considered by the State Board to be telephone companies, or because their earnings do not exceed $500 per annum.

The owners of lines from which the board received reports for 1909, but which were not taxed, numbered 435. The cost of the property of non-taxed lines as appears from the Record (See details, *Appendix III, and Rec. pp.* 206-207,) is:

	Cost.	Estimated tax at average of average rate.
From the reports for 1909, not including companies showing no cost	$110,818	$1,956
From the reports for 1909, including for each company reporting no cost, the average of all non-taxed companies reporting	145,203	2,551
From the testimony in these cases taking the highest cost proven by complainants	264,262	4,653
Includes companies that will be taxed in 1910	43,338	760
Includes companies new in 1909, will be taxed in 1910	14,315	251
From complainants' evidence; the cost for such companies as are expressly admitted to be co-operative and non-profit making	151,356	2,659
From complainants' evidence; the cost of production for all companies not expressly admitted to be co-operative and not organized for profit	113,906	2,001
From complainants' evidence; for all companies or lines which are not admitted to be co-operative and not organized for profit, where there is proof that they are not organized for profit and co-operative, but none to the contrary	84,785	1,489
From complainants' evidence; for all companies shown by any testimony or evidence to be engaged in business for profit	19,304	339
Includes new companies in 1909 to be taxed for 1910	4,498	49

The tables in *Appendix III* show in detail the character and extent of this property.

The assessments fixed for, and taxes levied upon the property of complainants for 1909, were as follows:

	Assessment.	Tax.
Citizens Telephone Co.	$2,300,000	$47,648
Citizens Telephone Co. of Jackson	160,000	3,307
	$2,460,000	$50,955

The bill, filed in each case, sets forth two claims of unconstitutionality of the taxing act:

(1) That, in its application to telephone companies, act 49 of 1909 is unconstitutional, depriving complainant of its property without due process of law and denying to it equal protection of law in violation of the Fourteenth Amendment to the federal constitution, (and of section 16 of Art. II of the Michigan constitution,) in that, all telephone companies whose gross receipts for the year ending June 30, do not exceed $500, are exempted from taxation under said act.

(2) That said act, in its application to telephone companies is invalid as contravening the requirements of section 21 of Art. V of the Michigan constitution, in that, its object, to provide for the assessment of the property of telephone companies, is not expressed in its title.

Originally the Michigan State Telephone Company and the Union Telephone Company were parties of this controversy, having filed bills similar to those filed by appellants, but upon the dismissal of their bills by the district court they paid in full the taxes assessed against them.

The statement of facts as found by the district judge taken from *Record pp.* 27-29, is as follows:

> "Prior to 1901, Michigan railroad, telegraph and telephone companies were taxed specifically upon their earnings. These taxes were assessed and collected under various acts. That concerning telephone and telegraph companies was act 179 of 1899. It prescribed a tax of three per cent. of the gross receipts. In 1901, following a political agitation on the subject, the legislature provided a plan for transferring railroads from the specific to the ad valorem basis. It created a State Board of Assessors, which was to assess the railroads' property at its true cash value, ascertain the average rate of taxes throughout the state and then levy this average rate against the amount of the assessment. The validity of this legislation was upheld in this court by Judge Wanty (Michigan Railroad Tax Cases, 138 Fed. Rep., 223), and his decree was upheld by the Supreme Court (201 U. S., 245).
>
> Thereafter, and by act 49 of 1909, telephone and telegraph companies were also transferred to the ad valorem basis, and put in the same class with railroad companies, subject to assessment by the State Board of Assessors. The act (§4) provided for the assessment 'of the property by whomsoever owned, operated or conducted *

* * of * * * telegraph companies, telephone companies, etc.,' but carried the following proviso:

'Provided, that the property of telegraph and telephone companies whose gross receipts within this state for the year ending June 30th do not exceed five hundred dollars, shall be exempt from taxation.'

Pursuant to this act, the State Board assessed the property of the four complainant companies at the aggregate sum of about $14,500,000.00, and levied thereon a total tax of about $300,000.00. A tax under the former three per cent. specific basis would have been about $130,000.00 so that the new law effected a $170,000.00 increase. They filed their several bills against the Auditor General to prevent the enforcement of the new tax. A preliminary injunction was granted and continued, on condition that the companies pay the tax accruing under the old law so that only the excess would be affected by the injunction. With this condition they have complied.

The bills allege that the proviso of §4 causes discrimination and taking of property in violation of the "due process" and "equal protection clauses of the fourteenth amendment to the federal constitution; and further allege that the act is invalid for deficiency of title under the Michigan constitution (Art. V., §21).

Upon the argument of a demurrer, it was thought that some of the general terms of the bill, in its allegations of lack of cause for discrimination, might be sufficient to admit evidence operating to define these general terms, and the demurrer was overruled. Full proofs have now been taken, and the following facts, which may bear upon the existence of forbidden discrimination, are established.

For the year ending June 30, 1909, 659 corporations, individuals, or associations made the required report. Of these, 224 showed receipts of more than $500 each, reported property said to have cost $35,000,000, and reported gross receipts of $7,600,000. The board assessed this property at $21,000,000, and levied thereon a total tax of $433,000 (in place of the former specific tax, which would have been $228,000). 435 of the reports showed receipts of less than $500 each. Property belonging to the persons and companies so reporting was not assessed. The cost of this non-assessed property, at the average reported cost per telephone of all reporting companies, would be about $145,000; complainants' proof tends to show such cost to be about $250,000; $200,000 may fairly

be assumed as such cost; and upon the comparative basis used with the largest corporations, this exempted property would have been assessed at $120,000. If we add an ample allowance for non-reporting, non-taxable property, it still appears that the property which escaped taxation and which forms the basis of the complaint, is not more than 1% of the total.

The great part of all the taxed property belonging to commercial corporations or enterprises organized and conducted for the purpose of earning and paying profits as or in the nature of dividends; substantially all that untaxed was the property of co-operative or farmers' mutual associations, usually unincorporated, conducted at estimated costs, and organized primarily to get for the associates cheap telephone service.

In the composition of the first or taxed class, there are exceptions to the description just stated, and there are to be found some conducted-at-cost enterprises. The proof does not show how many. If the extent of such enterprises is important in order to establish discriminations, then complainants' proof fails in this respect. It is, however, a safe assumption, from inspection of the list, that more than ninety-eight per cent of the property assessed represents commercial investments adapted and intended to earn interest or dividends.

In the composition of the second or exempt class, there are also exceptions to the stated formula. Out of the 435, there are 58 as to the character of which complainants raise this question. As to many of the 58, there is a lack of any substantial proof; as to some, classification on this basis is difficult, because they include elements characteristic of each class; but, excluding those which were new in 1909 and will be taxed in 1910, a conclusion that the property of the commercial investment class, which would escape taxation because of its small income, cost $75,000.00, resulting in an assessment valuation of $45,000.00, gives complainant the benefit of every doubt. This is less than one-fourth of one per cent. of the assessment.

These figures, compiled from the reports for the year ending June 30th, 1909, are subject to variations on account of property then not reported and so omitted, and also on account of property later devoted to such uses. Developments in the regular course of business and the research of parties brought to light, before the evidence closed, about 90 additional enterprises which had not re-

ported. These do not materially vary the proportions given and it is clear that the unobserved and undiscovered telephone systems must be almost wholly of the small, roadway class. There is no reason to suppose that the future, regular development of the business will change the existing proportions.

There has been, for some years, a continuing absorption by the larger companies of the small ones, and it is a frequent occurrence for a co-operative, non-profit-making company, having gross annual earnings of less than $500.00, to sell its property to one of the larger companies having a large income. It follows, as an undoubted fact, that the identical property, devoted continuously to substantially similar use, may, from year to year, shift between taxable and non-taxable class, solely on account of the ownership of the property."

ARGUMENT.

First.

Statement of the Federal question. The Federal questions presented are confined within narrow limits. The specific objection presented is, that, as the taxing act exempts from the imposition of the property tax telephone companies whose gross annual earnings do not exceed five hundred dollars per annum, the taxation of complainants' property denies them equal protection of the laws.

The objection is based upon the claim that there were, when act 49 of 1909 was passed, telephone companies of the same kind existing and doing business in Michigan under the same conditions, as complainants, whose gross annual earnings do not exceed five hundred dollars, who are therefore exempt from the property tax, and that such property cannot be made a separate class from complainants for taxation or exemption, but must be taxed in the same manner.

The exemption under act 49 of 1909, is not an exemption from all taxation, but any telephone company exempt thereunder is still subject to specific taxation upon its gross earnings under act 179 of 1899.

The Fourteenth Amendment in general. The solution of the question of arbitrary and unreasonable fixing of the classes for taxation presented, depends upon the application of principles which have become elementary.

Equal protection of the law does not mean the general and indiscriminate application of the same taxes, rules, restrictions, or methods to all persons or property, or that in statutes for taxation identical rules must be applied to all. It means rather, both persons or property may be separately classified, or combined with other persons or property, due regard being paid to the situation in which they are found, the purposes they are called upon to and do serve, the uses to which they are put, and their relation to other persons or property.

In brief, the frequent application of the Fourteenth Amendment to taxing statutes, has brought forth the rule now established, that not only is classification permitted by it, but that equality is produced in no other way. (*Western Union Telegraph vs. Indiana*, 165 U. S., 309; *Guthrie on the Fourteenth Amendment, p.* 119.) In cases found in another part of this

brief (*Appendix I*), the requirements and limitations of this constitutional provision are set forth at length; from them it is apparent that the greatest equality is produced through the grouping of persons and property in accordance with their relations, to other persons and property, to the laws applying to and regulating them, to their uses in, and relation to, society and business, and the application of different rules to, or the imposition of different burdens upon, the different groups.

Limitations upon right of classification. This right of classification, though broad and comprehensive, is not without limit; it cannot be exercised arbitrarily. Those persons or property in identical situation are entitled to insist upon the same treatment as and to be subjected to the same, and to no greater, or different, burdens than are other persons or property of the same class or character in the same situation.

The classification must stand upon a suitable basis, though upon the question of what is suitable basis and what constitutes sufficient difference to furnish a reason for separate classification and treatment, the legislature is given broad discretion, and great deference will be paid to its judgment, and its conclusions and enactments will be regarded as conclusive, except in the absence of convincing proof that arbitrary selection has been made. (*Appendix pp.* 5, 12, 30 *et seq.*) The rule to which the classification must conform as expressed by Mr. Justice Brewer, in *Gulf, Colorado and Santa Fe vs. Ellis* (165 U. S., 155), is:

> "It is not within the scope of the Fourteenth Amendment to withhold from states the power of classification. * * * It is equally true that such classification cannot be made arbitrarily." * * *
>
> "That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed and can never be made arbitrarily and without any such basis. * * * The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations."

In *Central Lumber Co. v. So. Dakota* (33 S. C. R., 67), it was said:

> "It (the 14th amendment) does not prohibit a state from carrying out a policy that cannot be pronounced purely arbitrary, by taxation or penal laws."

In *Keeney v. New York* (222 U. S., 536), it was said:

> "There can be no arbitrary and unreasonable dis-

crimination. But when there is a difference it need not be great or conspicuous in order to warrant classification."

In the application of the amendment, no difficulty has been experienced in determining its general requirements, though it has not always been easy to ascertain upon which side of the dividing line a particular classification lay—whether the classification made was arbitrary or based upon differences bearing a just and reasonable relation to the purpose in respect to which the classification was made. In taxation, however, where a case of doubt has been presented the legislative judgment in determining the classification proper has unusally if not invariably been permitted to turn the balance in favor of the validity of the classification.

In classification for taxation greater latitude has been allowed to legislatures, and greater deference paid to their judgment when exercised in the separation of the different classes than where the classification was for other purposes. (*Appendix, p.* 19 *et seq.*)

The classification made is so eminently proper that it seems almost unnecessary to do more than to call attention to the general characteristics which differentiate the classes made. If any case of classification for taxation could be valid, and we have found no reported case where classification for the purposes of a general revenue statute has been held not to be good, then this classification is valid.

The classification made may be sustained as to complainants for at least eight reasons:

A.

That complainants, as well as the larger portion of the class to which they belong, are profit making and dividend earning and paying institutions engaged in general telephone business, while the exempted property and the persons or institutions owning it are not engaged in such business, but are mutual or co-operative institutions, made up of combinations of farmers, designed to serve the private purposes of its owners or their members, and not serving, or designed to serve, the general public or to do general telephone business.

B.

The public service character of the institution taxed is a reason for making it a class separate from the institution and property which is not designed for use and is not used, and by reason of its limited character and the nature of its organization and operation cannot be used, in public service.

C.

That the size of the company or its business is a proper basis for determining its inclusion or exclusion and the legislature might refer the determination of that size to such a basis of measurement as it deemed proper.

D.

That the classification, being based upon the earning capacity as measured by the amount of gross earnings produced by a particular telephone line, is valid, and that the elimination of the companies with small earning capacity, or earning capacity under a certain amount, through this basis of measurement is proper.

E.

That the practical considerations which surround the taxation of telephone lines and which render it impossible to impose a property tax upon the smaller companies or lines at a profit, render it expedient and proper to eliminate from the taxing act the smaller companies or lines.

F.

That as the complainants are corporations, as to them the system is valid as a proper exercise of the right to alter, amend or repeal the law of their incorporations.

G.

There is no classification based upon character of ownership, and taxability or exemption do not occur solely by reason of change of ownership, as is intimated in the opinion of the district judge.

H.

The undoubted right of the legislature to make exemptions from any class selected by it for taxation, sustains the exemption in this case.

I.

A difference between the taxed and exempted classes is based upon the fact that the taxed class consists of commercial or profit making companies, while the exempted class consists of co-operative or non-profit making institutions, and permits of separate treatment.

(1) The statutory description of the property taxed and of the exemption does not of itself set forth the full significance of the classification or the actual and apparent differences which exist between complainants and their property and the institutions exempted and their property. The principal and controlling differences are not differences in amount of earnings alone, though that is of itself a proper basis for classification, but they are differences of situation, of the character of the institutions and of the business in which their property is engaged, of the uses to which it is put, and of the purposes which it serves.

The class to which complainants belong, and with which they are taxed, is engaged in general telephone business for profit as dividend-earning and paying institutions, they possess and operate the entire equipment for carrying on general telephone business, their property extends over a broad area and into as great a territory of the state as they can reach, some of them extending practically over the entire state, and they have and use in their business property of great value; the value of the property of the smallest of complainants amounts to $160,000, and of the largest, amounts to $11,500,000, and they furnish and are required to furnish telephone service to all who desire to enter into contract arrangements.

While the class taxed is made up largely of telephone companies of the description just given, there are however, among those taxed, either properly or improperly, a few mutual or co-operative farmers' telephone lines, of the same character as those exempted, but which are not making complaint of erroneous classification.

On the other hand, the exempted class, with few exceptions (17 companies aggregating in cost $19,304, a part of which did not exist when the law was passed), is of a very defferent character; it is made up of associations of farmers, who have

constructed and maintain short lines of telephone for the sole purpose of connecting themselves and their neighbors, who are members of the same association, with the line or exchange of some general telephone company in order that they may receive *its* telephone service, the same as do its regular subscribers. There are also in this class a few larger mutual companies.

The purpose of these associations of farmers in their organization and in the construction and maintenance of lines of telephone is two-fold, viz:

(*a*) To extend to themselves the service of an existing general telephone company, and (*b*), to secure that service upon a cheap rental basis.

Among the differences existing between complainants and the class to which they belong and these farmers' associations are the following:

(a) The latter do not operate telephone lines. The exchange with which they are connected and which furnishes them service is, except in rare instances, owned and operated by some general telephone company, usually one of the complainants, and the only thing which the farmers' association does is to receive the service, collect from its members the fees to pay for it, and to maintain the line. (*Rec. pp.* 74, 81, 82, 121-122, 123, 125, 176-187.)

(b) They do not, and cannot do a toll business, because operating no exchange and owning no toll lines and being but a voluntary association of a number of the subscribers of some other company, different from the usual subscriber only in the fact that they own and maintain a part of the line by which they reach and are reached by such other company's exchange. (*Rec. pp.* 81, 93, 99.)

(c) They do not operate for profit, nor pay dividends. (*Rec. pp.* 85, 86, 88, 92-3, 145, 147.)

(d) They do not carry on general telephone business, nor furnish telephone service to others than their members. (*Rec. pp.* 148, 176-187.) In a few cases they have permitted persons not members of the association to be attached to their line and receive rental therefor, but in such cases the service is still carried on by one of the complainants or some other company.

(e) They do not maintain offices or own or operate switchboard or exchanges or other equipment required to carry on telephone business, except in rare instances. (*Rec. pp.* 161, 162, 166, 167, 168, 169, 171, 172, 176-177.)

(f) The farmers' line averages but eight or nine members (*Rec. pp.* 80, 82), and is of an average length of seven or

eight miles, the longest known is twenty-one miles. (*Rec. pp.* 80, 123, 125.)

(g) In the sense that complainants are telephone companies, they are not such. A telephone company in the recognized acceptation of that term, of which the court will take judicial notice, is an institution which furnishes service, to all who desire it.

(h) The telephone business as carried on by complainants has been a known and recognized business for many years. The rural and roadway lines constructed and owned by the subscribing farmers is a new creation of the past five or six years. (*Rec. pp.* 82, 152.)

(i) The rural, roadway and sub-license telephone is stimulated into existence by the larger profit-making company for the purpose of extending its business (*Rec. pp.* 176-187.)

(j) The public service telephone company is entitled to occupy the highways and to exercise the right of eminent domain (§6691 Mich. C. L. 1897; act 93 of 1899), rights of which character can only be granted for a public purpose. (*Water Power Co. v. Circuit Judge*, 133 Mich., 53.)

(k) A very few of the exempted companies are mutual companies in which one or more of the foregoing characteristics of difference from the profit making company are lacking; the number of mutual companies of this type does not appear from the record and we are safe in saying that it is very limited; they are, so far as we can separate them, listed in the last table of *Appendix III.*

(l) The District Judge recognizes the existence of a number of the distinctions above set forth, and regards them as sufficient to justify the classification made, saying, (*Rec. p.* 31):

> "Is there, then, in this case, any difference, beyond the respective earnings, between the property taxed, and the property untaxed, which difference bears any reasonable relation to the classifying acts of the assessing board? Disregarding for the moment the exceptional instances, we find (1) that the property exempted is only a trifling portion of the whole; (2) that the cost of assessing and collecting in this class would be disproportionate to the amount which would be realized; (3) that this property is in the incipient or development stage, while the taxed property is in the fully developed form; (4) that the use of the untaxed property is predominantly private, while the use of the taxed property is correspondingly public; and (5) that the exempted property is used for the personal convenience and economy of the owners, while the

taxed property represents commercial investments for profit-making purposes. It seems to me clear that these distinctions, and especially the last named, fully justify a classification resting on that basis, and justify taxing the public use, profit-earning property, while exempting the private use, co-operative property."

Complainants furnish the general public with telephone service, and at the same time, serve the farmers' mutuals or co-operative associations and their members as a part of that general public. (*Rec. pp.* 82, 93, 122.) To say that the two classes, those serving and those served, must be treated alike in order to make the system for the taxation of general telephone companies conformable to the Fourteenth Amendment is not only unreasonable, but absurd, and in view of the differences which, in fact, exist, there should be no necessity for further comment to establish the propriety of the classification.

That the mutual company is engaged in a different business than complainants is well illustrated by the testimony of Mr. Tarte, general manager of one of the complainants. He said:

"A. Well, those companies that are organized for the purpose of getting service at a low rate and not make any profit, don't do business the same way as we do.

Q. None of them?

A. Why, they cannot. They are organized for the purpose of giving service at a low price and not making any profit, it is physically impossible for them to do business as we do because we are organized for the purpose of making profit.

Q. They don't collect money for the purpose of paying dividends as your company does?

A. Not that kind of a company don't no, sir." (*Rec. pp.* 92-93.)

"A. I will have to answer it the same way so as not to get myself misunderstood: A company that is organized for the purpose simply of getting free service or cheap service for its subscribers and without any intention of making profit, is not doing business, as far as the financial element is concerned, in the same way that we are." (*Rec. pp.* 93.)

(2) In cases closely related to this, classifications have been sustained which indicate without question the propriety of that here made.

It must be regarded as settled that property engaged in the same business may be separately classified and treated for taxation; thus, property engaged in a particular line of business such as railroad, express, warehousing, etc., may be separated into classes depending upon location, amount of earnings, length of line operated or other considerations, and the owners or operators permitted to charge rates at a varying scale, depending upon one of these conditions, or be taxed at different rates based upon the amount of earnings. The many cases sustaining this authority will be found cited in *Appendix I, p. 43 et seq.* In addition we here refer to several cases which are controlling.

In *Pacific Express Co. vs. Seibert* (142 U. S., 353), the exemption of express companies owning their own means of transportation from taxation directed to companies operating under contract with railroads was held proper; in *American Sugar Refining Co. vs. Louisiana* (179 U. S., 80), the exemption of planters and farmers grinding and refining their own sugar in the taxation of the business of grinding and refining sugar was held permissible; in *Fidelity Life Insurance Co. vs. Mettler* (185 U. S., 328), giving effect to a rule of distinction applied in many states, life and health insurance companies were held properly placed in a different class from mutual and relief associations of the same character, the court recognizing the absence of the profit-making feature in the one class and its presence in the other as a sufficient reason for different treatment; in *Michigan Central vs. Powers* (138 Federal, 240; 201 U. S., 245, 302), the exemption of logging roads from a system for the ad valorem taxation of railroad property was held valid. The lower court there saying:

> "But the complainants contend that in the Michigan statute under consideration a different method is provided for the taxation of railroad property owned by railroad corporations and railroad property owned by individuals and other corporations. It is stated that a number of individuals and manufacturing corporations of the state own and operate railroads chiefly for logging purposes, but incidentally for carrying passengers and freight for hire, and that complainants' property is not legally subject to a different method of taxation than the property of these individuals and manufacturing corporations used in the same business.

The complainants are all incorporated under the statutes authorizing the incorporation of railroad companies, which statutes give to the complainants powers and privileges not enjoyed by any other corporations or individuals. It cannot be said that individuals and corporations which have no right of eminent domain and the various privileges accorded to railroad companies incorporated under the railroad statutes of the state are in the same class with railroad corporations which exercise these rights and privileges. The Fourteenth Amendment to the federal constitution permits the legislative power of the state to classify property for the purpose of taxation according to its use by railroad companies which are given these powers and privileges. It is not necessary that all railroad property be taxed under one method and at the same rate, but it is only necessary that all property belonging to railroads in the same class be taxed alike. If it is conceded that these logging roads owned by manufacturing corporations or individuals are railroads, they certainly are not railroads of the same class with the complainants. It seems as though it must be as competent for the legislature to place different classes of railroads in different classes, for the purpose of taxation, as it is to place railroads in a class by themselves, and tax them and their property differently from other persons. Street railroads, which are chartered by the ordinances of various cities, and electric suburban roads, organized under a general statute for that purpose, have different privileges and powers from those given to the roads organized under the general railroad statutes, and those roads built for service in the business in which individuals and manufacturing corporations are engaged have still further restricted powers and privileges; and we can see no reason why, in its discretion, the legislature may not, for purposes of taxation, place the railroads organized under the general railroad statutes in a class by themselves, leaving the other roads to be taxed under the general laws of the state, without violating the fundamental principles of taxation, or the Fourteenth Amendment to the federal constitution. The property of railroad corporations in Michigan has previous to the present act been taxed at a percentage of their gross earnings in lieu of other taxes; and it has never been thought that the property of a lumber company or manufacturer, used in the operation of a private railroad in his business, came within the

terms of the statute or that the statute was unconstitutional because such property was not included."

In the following cases the non-profit making character of the exempted institutions was regarded as a sufficient distinction to sustain the exemption while profit-making institutions were taxed.

Kansas City Exposition Driving Park v. Kansas City, 174 Mo., 425; 74 S. W., 979.

Peacock & Co. v. Pratt, 121 Fed., 776.

(3) Distinctions growing out of the fact that the farmers' companies do not operate telephone lines. The nature of the roadway lines, whether connected directly with the switchboard of the M. S. T., or with a switchboard operated by one of its rural managers, is clearly stated in the record. Except in several isolated cases they do not operate the line, or own or operate the switchboard or exchange. The measure of their activity is, that they own and maintain a line and poles upon which are strung telephone wires, and receive over those wires, the service of some general telephone company; they pay an annual rental to that general telephone company or to its rural manager; they either own their telephones individually or lease them from the general telephone company, directly or through its rural manager, for an annual rental charge; they are listed in the telephone directory of the general telephone company, and so far as the service they receive and the operations of the general telephone company, in furnishing them service are concerned, they are the same as occur in serving regular subscribers. (*Rec. pp.* 81, 82, 122, 123, 125, 176-187.)

But one conclusion is possible; it is that these lines are not telephone companies, but merely subscribers to and patrons of, the general telephone company. Their business is developed by those companies which encourage them to construct their lines (*Rec. pp.* 176-187), and the only profit made in the operation is that which the general telephone company receives from the rental and the small amount which the rural manager receives for his service in operating the board, where the roadway is connected with what is termed a "rural."

This description eliminates these lines and their property from any and all possible claim of discrimination, because upon the face of the situation, they are not of the same character as complainants. According to the record, property to the amount of $151,356, out of $264,262 belonging to all ex-

empted companies belongs to companies of this class; the remainder of $113,906 is in part made up of lines of this same character, the proof not showing the exact amount, although of that amount $84,785 belongs to mutual or farmers' companies which are undoubtedly for the most part "roadways."

It is evident that whatever operation there is of these roadway lines is that of some regular telephone company, which is taxed. That regular telephone company receives the only profit made through their operation; that profit enters into the income of these general telephone companies, which forms the basis of their valuation for assessment and in that way they are all, in fact, so far as they are used in producing an income, taxed as enhancing the value of the property of the general telephone company which operates the service over them. Manifestly to tax this property both in the hands of the general telephone company and in the hands of the roadway line, produces a duplication of assessment which the legislature, in making the exemption, thought it wise to avoid.

(4) Variation from the rule that the exemption includes only non-profit making institutions; so small as to be negligible; to be the subject of successful complaint, discrimination must in fact exist, which is not the case here.

Discrimination, to be the subject of successful complaint, must be more than theoretical, it must be real and actual and result in injury to those complaining. The basis of the complaint is that complainants have been discriminated against and injured; that property or things which should have been included, with them have been excluded, and that therefore their rights or interests are in some manner prejudiced.

When we come to examine the classification and the properties and institutions attributed to the different classes and to compare the value of the property included in the different classes, the amount and value of the property which is exempted is so small that even if it is of the same character and engaged in the same business as complainants, no real discrimination results, and no injury has been done complainants.

The limitation of the Fourteenth Amendment is that certain persons or property shall not be selected for the bearing of burdens which should be shared by other persons or property with those or that taxed. It is the arbitrary, unreasonable and clearly hostile action of the state that the amendment is intended to inhibit, and unless the legislative action so unreasonably or unwarrantably fixes the classes as to exclude from the class taxed, property in amount which would

make a perceptible difference in the burden cast upon the complainants, they can have no occasion for complaint. This is the necessary result of decisions, which, while not actually deciding the point, by analogy, control it. Thus in *Henderson Bridge Co. vs. Henderson City* (173 U. S., 592, 614-615), it was said:

> "But in order to bring taxation imposed by a state or under its authority, within the scope of the Fourteenth Amendment of the national constitution, the case should be so clearly and palpably an illegal encroachment upon private rights as to leave no doubt that such taxation by its necessary operation is really spoliation under the guise of exerting the power to tax. * * * All doubt as to the validity of legislative enactments must be resolved if possible, in favor of the binding force of such enactments."

Or, as stated in *King vs. Mullins* (171 U. S., 404-436):

> "The judiciary should be very reluctant to interfere with the taxing systems of a state, and should never do so unless that which the state attempts to do is in palpable violation of the constitutional rights of the owners of property."

Tested by these rules, and by the numerous other adjudicated cases, it follows that classification need not proceed along lines which are scientifically accurate or mathematically correct. (*See Appendix I, p.* 13,) and that in the inclusion or the exclusion of subjects of taxation it is not essential that the rule of equality be absolute, but that substantial and reasonable accuracy is all that can be expected.

Conceding, for the purpose of the argument, that the property of the exempted class is not different from that of complainants, and taking as the value of that property, the highest amount which the complainants in their testimony fix for it, there is no such arbitrary placing of the burdens of government upon the complainants, while relieving others in like situation from such burdens, as to require the setting aside of the taxing system. In other words, the property of the exempted class, considered in comparison with that of complainants and the class to which they belong is insignificant and but a small percentage of the value of the property taxed.

When, going a step further, we eliminate from consideration the property belonging to those exempted institutions not profit making, and clearly of a class different than complainants, and confine our inquiry to whether there is an un-

constitutional discrimination because complainants are taxed while other property, belonging to small institutions engaged in business for profit, is exempted, we find that such property exempted is infinitesimal as compared with the property of any one of the complainants, and much more so when compared with the value of the class taxed.

	Value.	Tax.
Complainants	$14,505,000	$299,867
All property taxed	20,948,375	433,072
All property exempted, using the highest amount	264,262	4,643
Property in same business as complainants, exempted	19,304	339

Taking the complainants' proof for the value of the exempted property, it is found that the entire exempted property is but 1/80th of that assessed, in value, or 1¼ per cent.

Taking the complainants' values, the exempted property engaged in the same business as complainants by reason of being operated by profit making telephone companies, is but 1/1111 of that taxed, or nine one-hundredths of one per cent.

The list of exempted companies consists of

(1) "Farmers' roadways" which comprise the major portion.

(2) "Rurals," made up of combinations of roadways, where a manager, under contract with the M. S. T., operates the switchboard and charges a rental to the roadway and of which there are about twenty-eight.

(3) Other mutual companies, whose character is not explained in detail, but which are shown for the most part to be farmers' lines, and which sometimes own and operate their own switchboards; the aggregate of their property is of small amount. (Shown in last table *Appendix III.*)

(4) Small companies operating for profit; of which there are seventeen, the highest figure shown for their aggregate value being $19,304; of these two, whose property aggregates $4,498, were new in 1909 and they will be taxed for 1910.

While we have taken the complainants' figures as to the cost of the exempted property, that was not because we concede those figures to be correct, but because, conceding the utmost that complainants have claimed, a comparison of the value of the two classes furnishes the answer upon whether the complainants have been arbitrarily discriminated against. Should it become necessary to ascertain the real value of the exempted properties, it will be found to fall much below the estimates of the complainants. (*Appendix II.*)

Absolute equality in taxation is neither attainable nor required by the amendment; practical taxation and practical equality in its application is all that can be required or expected, and when measured by practical considerations and good common sense, the property of the exempted class is different from that taxed, or forms but a small percentage of that taxed, it cannot be said that equality is denied. The governing rule taken from *Travelers Insurance Co. vs. Connecticut* (185 U. S., 372), which is a fair exposition of the rule upon the question, is:

> "Perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised must when we consider the immense variety of subjects which it necessarily embraces, be imperfect. And when we come to its application to the property of all the citizens, and of those who are not citizens, in all the localities of a large state like Illinois, the application being made by men whose judgments and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature and of the evidence on which human judgment is founded."

In the consideration of questions of discrimination the courts have given attention to the relative amounts of property from whose exemption or different treatment discrimination was claimed to result.

Boyer vs. Boyer, 113 U. S., 693.

First National Bank vs. Ayers, 160 U. S., 667.

In *Mercantile Bank vs. New York* (121 U. S., 161), it was said:

> "It is further objected, on similar grounds, to the validity of the assessment complained of in this case, that municipal bonds of the city of New York, to the amount of $13,467,000, are also exempted from taxation. The amount of the exemption in this case is comparatively small, looking at the whole amount of personal property and credits which are the subjects of taxation; not large enough, we think, to make a material difference in the rate assessed upon national bank shares."

In *Ozan Lumber Company v. Union County Bank* (207 U. S. 256) it was said:

> "Exceptional and rare cases, * * * may be imagined where this general classification separating the merchants and dealers from the rest of the people might be regarded as not sufficiently comprehensive, because in such unforeseen, unusual and exceptional cases the people affected by the statute ought, in strictness, to have been included in the exception. See opinion of Circuit Court herein, 127 Fed. Rep., *supra*. But we do not think the statute should be condemned on that account. It is because such imaginary and unforeseen cases are so rare and exceptional as to have been overlooked that the general classification ought not to be rendered invalid. In such case there is really no substantial denial of the equal protection of the laws within the meaning of the amendment.
>
> It is almost impossible, in some matters, to foresee and provide for every imaginable and exceptional case, and a legislature ought not to be required to do so at the risk of having its legislation declared void, although appropriate and proper upon the general subject upon which such legislation is to act, so long as there is no substantial and fair ground to say that the statute makes an unreasonable and unfounded general classification, and thereby denies to any person the equal protection of the laws. In a classification for governmental purposes there cannot be an *exact* exclusion or inclusion of persons and things."
>
> Central Lumber Co. v. So. Dakota, 33 S. C. R., 67.

See also cases cited in *Appendix I, pp.* 13-18.

The facts indicate conclusively the want of merit in any claim of discrimination which is accompanied by injury to complainants. Their burden is not increased by the exemption, as, under the average rate system, the tax rate is not affected by the amount of property taxed and there is no greater elimination of property or persons from the operation of the taxing law than is within the legislative discretion to make, and no greater variation than would be found in any system of taxation which is practical, and the property exempted is subject to taxation under another system.

There are undoubtedly other telephone lines than those contained in the lists found in the record. It would be strange if this were not so, because of the insignificance of the great majority of the farm lines whose average, as the testimony shows, is seven or eight miles in length with eight or nine members. It is remarkable that the state board succeeded in getting as nearly a full list as it did. Mr. Parker testified that for 1910, seventy-five or eighty additional lines were discovered, but he did not know whether or not they were in business in 1909; their size or the character of their business operations or income are not shown. In addition, Mr. Berry on his last examination produced a list (*Rec. pp.* 210-211), of thirteen lines with an aggregate of 801 telephones, which had not been previously referred to in the testimony under the names given or were not contained in the state board's lists, by those names. If we value their property at the highest figure testified to by Mr. Berry, it would aggregate $24,030. There is no proof that these companies are not all mutual institutions, nor is there any proof that their earnings are not sufficiently large to render them taxable, and for that reason we may dismiss them from consideration. The burden is upon complainants to show the discrimination and to make it out beyond speculation.

II.

Distinctions in use of taxed and exempted properties; the public service character or non-public service character as a basis of classification.

(a) Embraced in what has already been said is an evident distinction in the use of the property of complainants, and that of all but seventeen of the exempted lines whose properties aggregate $19,304 and bears the relation of one to one thousand eleven to the value of the property taxed. This distinction is, that the property of the complainants is engaged in public service business (act 138, P. A., 1911, p. 199), while the property of the exempted lines merely serves the private and personal uses of its owners. The general telephone company deals with every member of the public who desires service; the farmers' line restricts the service furnished over its line to it owners and members.

This distinction is one which has been recognized as a basis for separate treatment and regulation, e. g. for the pur-

pose of rate regulation the rule is established, that the rates of an institution engaged in public service are subject to legislative regulation, while on the other hand, the rates of charge for a property or business not of a public character, are not subject to regulation. The one property is affected with a public interest, while the other is not. In *Munn vs. Illinois* (94 U. S., 113, 125), it was said:

"From this it is apparent that, down to the time of the adoption of the Fourteenth Amendment, it was not supposed that statutes regulating the use, or even the price of the use, of private property necessarily deprive an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular; it simply prevents the states from doing that which will operate as such a deprivation.

This brings us to inquire as to the principles upon which this power of regulation rests, in order that we may determine what is within and what without its operative effect. Looking then, to the common law, from whence came the right which the constitution protects, we find that when private property is 'affected with a public interest, it ceases to be *juris privati* only.' This was said by Lord Chief Justice Hale more than two hundred years ago, in his treatise *De Portibus Maris*, 1 Harg. Law Tracts, 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence, and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but, so long as he maintains the use, he must submit to the control."

Budd v. New York, 143 U. S., 535-544.

Brass v. North Dakota, 153 U. S., 404.

Georgia Railroad & Banking Co. v. Smith, 128 U. S., 179.

Charlotte, Columbia & Augusta v. Gibbes, 142 U. S., 393.

Louisville Tobacco Warehouse Co. v. Commonwealth, 106 Ky., 165; 57 L. R. A., 33.

Adams Express Co. v. Kentucky, 166 U. S., 179, 180.

Schmidinger v. Chicago, 33 S. C. R., 183.

The same principle was given effect and a similar difference held to justify separate classification in *Seaboard Air Line vs. Seegers* (207 U. S., 75), in a statute which compelled carriers to pay their debts within a given time, the court saying:

> "It is contended that the equal protection of the laws guaranteed by the first section of the Fourteenth Amendment, is denied. The power of classification is conceded, but this will not uphold one that is purely arbitrary. There must be some substantial foundation and basis therefor. * * * We are of the opinion that this case comes within the limits of constitutionality. * * * The classification is based solely upon the nature of the business, that being of a public character. * * * It may be stated as a general rule that an act which puts in one class all engaged in business of a special and public character requires of them the performance of a duty which they can do better and more quickly than others, and imposes a not exorbitant penalty for a failure to perform that duty within a reasonable time, cannot be adjudged unconstitutional as a purely arbitrary classification."

An instance of classification based upon this distinction is found in the constitutional provision under which the State Board of Assessors was created; that permits the extension of the system only to such property individually owned as is engaged in public service business.

(*b*) Act 49 of 1909 must be limited in its application to property not owned by corporations, to that engaged in public service business. This is the full extent of the legislative authority to impose taxation through a State Board of Assessors upon property other than that belonging to corporations.

This rule would eliminate from the assessed list practically every roadway and farmers' mutual company.

The constitutional amendment adopted in 1900, which first made possible the taxation of corporations by the State Board of Assessors, was limited to corporations. Under its provisions it was impossible to extend the system of assessment through a State Board of Assessors to other than corporate property.

The constitutional convention of 1909, extended the scope

of the constitutional provision and permitted the legislature to provide for the assessment through a State Board of Assessors, of not only the property of corporations, but as well the property "by whomsoever owned, operated or conducted * * * engaged in any public service business." Thus it was made possible for the legislature of 1909 to provide for assessment through the State Board of Assessors, of property not belonging to corporations, but engaged in public service business.

That it could not include within the system the roadway lines, owned and operated by farmers' mutuals, but extending no service to the public outside of their own members, is evident from the fact that that property was not engaged in public service business.

In *Cahen v. Brewster* (203 U. S., 543, 552-553), it was said:

> "It was certainly not improper classification to make the tax depend upon a fact without which it would have been invalid. In other words, those who are subject to be taxed cannot complain that they are denied the equal protection of the laws because those who cannot legally be taxed are not taxed."

III.

The exemption of the smaller members of a class permitted. The exemption of the smaller properties of a particular class has always been permitted. There is no state that has not numerous exemptions based upon this principle, and those exemptions are granted to designated persons to the exclusion of other persons or classes of persons, e. g. the common exemption of a certain amount to householders, which is of conceded validity. The same principle is given effect in *King vs. Mullins* (171 U. S., 435), where the exemption of tracts of land of less than 1,000 acres from the provisions of an act relating to the listing of lands for taxation was held proper; in *Cobb vs. Commissioners* (122 N. C., 311), where the exemption of those whose gross earnings did not exceed $1,000 per annum from a license tax upon hotel keepers, was upheld; in *St. Louis Consolidated Coal Company vs. Illinois* (185 U. S., 203), and *McLean v. Arkansas* (211 U. S., 539), where exemptions were permitted, of mines employing a limited number of men, from police regulations applying to mines generally; in *N. Y., N. H. & H. vs. New York*

(165 U. S., 628), and *Dow vs. Beidelman* (125 U. S., 680), where railroads of less than a certain number of miles in length were exempted from police and taxing regulations applicable to railroad companies; in *Postal Telegraph Company vs. Adams* (155 U. S., 688), in exempting from the general system of taxation, telephone companies having less than 1,000 miles of wire in the state; in *Magoun v. Illinois* (170 U. S., 283), where legacies of less than a certain amount were exempted from taxation; in *Engle v. O'Malley* (219 U. S., 128), banking institutions whose average deposits exceeded $500 per annum per individual, were held to be properly classified differently than banking institutions whose average of individual deposit was less than that amount; and in *Quong Wing v. Kirkendall* (223 U. S., 59), exempting hand laundries employing two women or less from a license fee upon hand laundries.

IV.

Propriety of classification based upon differences in earning capacity. If the classification rested upon the sole basis of a difference in earning power of the companies or property taxed, it would be equally valid. It is permissible for the legislature to make a separate class for taxation of telephone companies and to take from that class for exemption or for taxation under some other system, all those institutions of small earning power and to determine the classification by fixing the amount of earnings which shall throw the property into the taxed or exempted class, or into the class taxed by one system or another.

Such a classification has for many purposes been held sufficient, e. g. for the purpose of determining the taxability and rate of tax to be imposed upon the privilege of inheritance (170 U. S., 283); for the purpose of determining the rate or tax to be imposed upon the privilege of carrying on mercantile or other business, the tax being graduated upon the amount of income from the business or the amount of property received (184 U. S., 329); for the purpose of determining the rate of privilege, franchise or business taxes to be imposed upon foreign and domestic corporations (134 U. S., 594); for the purpose of determining the amount of contribution by railroads to the expenses of a railroad commission (142 U. S., 386); and for the purpose of determining and graduating the rate of fare to be charged by railroad

companies for the carriage of passengers. (143 U. S., 339.) These, and many other similar classifications (*Appendix I, p. 44 et seq.*), based upon the amount of earnings, have been sustained.

There is here no attempt to graduate the tax upon property nor attempt to say that the value of the property belonging to a particular owner, or engaged in a particular business shall determine its taxability or exemption, or fix the rate, or method of its taxation. The classification is based upon the amount which the property will produce; if an organization regardless of its value will produce an income in excess of five hundred dollars per annum, it becomes taxable under act 49 of 1909. If it will not produce that amount per annum, then, regardless of its value, it is not taxable. The earning power becomes the determining criterion in fixing the exemption. That this bears a reasonable and just relation to the subject of taxation seems to be beyond question. The purpose of, and object to be obtained, in taxation is to so place the burden that it may be the most readily borne or diffused. To do this presents a question for legislative solution, that is, how shall the burden be imposed to produce the tax with the least possible friction and the greatest equality. This permits the exemption of those small and insignificant properties which would find difficulty in paying the tax, or, by reason of the limited number of their patrons, would be unable to diffuse it. The tax must be paid from earnings, and the only possible basis of continued and successful taxation of property is a taxation which has such reference to the earnings as to permit them to pay the tax, and any other principle of taxation would be destructive of itself. The question of amount of earnings therefore bears a direct and necessary relation to the question of taxation, and where there is a difference in the earning power or in the power to produce the means to liquidate the tax, that difference, if in the judgment of the legislature the situation requires it, becomes a proper and legitimate basis of classification, and property with small earnings can be exempted.

The cases adjudicating the propriety of classification by amount, by size, by income producing character, by location and other things of that nature, all furnish instances to sustain the validity of the classification here made.

This much is established by the cases, that the difference in earning power is a difference which is to be regarded in making classification for divers purposes and that classifications based upon such principle are valid. If it be valid for

the purpose of separating the classes and fixing the rates of charge upon railroads, there is no different principle which would preclude a reference to those same earnings as the measure of whether an institution should be subjected to or excluded from a certain basis of taxation.

The question of whether a different rule would apply in determining what is a sufficient difference to sustain classification with regard to an excise or an occupation tax, and with regard to a property tax, was indirectly commented upon in the recent case of *Brown-Forman Co. vs. Kentucky* (217 U. S., 571), were it was said:

> "It has been urged that the tax is not imposed as a license upon the doing of business, but is laid upon the goods produced, and is therefore arbitrary and discriminatory as one not imposed upon all other like kinds of liquor, whether produced in or out of the state. This contention, if good, would only carry the case back to the underlying objection that the classification is arbitrary and unreasonable, and therefore void, as denying the equal protection of the law, a question which at last must be answered, whether the tax be an occupation or a property tax."

And in *Foster v. Hart Consolidated Mining Co.* (122 Pac. (Colo.), 50), mines, producing less than $5,000 per annum, were classified for taxation differently from those producing more than that amount, and the same principle was upheld as to a previous law for the classification of mining companies producing less than $1,000 per annum differently from those producing a greater sum for the purposes of property taxation. (*People v. Henderson*, 12 Colo., 369.)

The statutory division is not arbitrary. The system is elastic in the sense that from year to year the list of taxed and exempted companies will vary with the variation in earnings. A company taxed this year may be exempted next, or one exempted in one year may be taxed in another. The rule of exemption is uniform and equal in that, whenever a line of telephone falls within the class fixed, it becomes entitled to the exemption or becomes subject to taxation.

The earning power has in many instances been made the determining criterion whether an exemption from taxation upon property should be enjoyed. An exemption until the beneficiary shall make a certain percentage or amount of profit upon the invested capital has often been sustained.

Mobile & Ohio v. Tennessee, 153 U. S., 486.

Railroad Company v. County of Hamblen, 102 U. S., 273.
Chesapeake & Ohio v. Miller, 114 U. S., 176.
Yazoo & Mississippi Valley v. Adams, 180 U. S., 1.
Raleigh & Gaston v. Reid, 13 Wall., 269.
State v. Norwich & Worcester, 30 Conn., 290.
State v. Minton, 23 N. J. L., 529.
Cook v. State, Etc., Prosecutors, 33 N. J. L., 474.
State Board of Assessors v. Morris and Essex R. R. Co., 49 N. J. L., 193.
Mobile & Ohio v. Moseley, 52 Miss., 127.
Natchez, Jackson & Columbus v. Lambert, 70 Miss., 779.
Richmond & Danville v. Board of Commissioners, 74 N. C., 506.
North Carolina R. R. Co. v. Commissioners, 77 N. C., 4.
Belo v. Commissioners, 82 N. C., 415.
Richmond & Danville v. Commissioners, 84 N. C., 504.
Raleigh & Gaston v. Commissioners, 87 N. C., 414.
Knoxville & Ohio v. Hicks, 9 Baxter (Tenn.), 442.
Baltimore & Ohio v. Supervisors, 3 W. Va., 319.

V.

The property of a given character which cannot be profitably taxed, may be exempted. Comprehended within the legislative duty to select the subjects of taxation and to impose thereon the needed taxes, is the duty and authority to determine where profitable taxation can begin. It is evident that taxation at a loss or at so small a margin of return that the taxation is not profitable, is not required. It is particularly a legislative province to say whether or not the smaller properties of a given class will or will not produce sufficient revenue to justify the imposition of a tax, and in a case where the exemption can be attributed, as here, to the determination of such a question, the court will not indulge in fictions for the purpose of saying that a clear and hostile discrimination, sufficient to violate the Fourteenth Amendment, was intended or results, unless such be clearly the fact.

Persons or property taxed cannot insist that those whose taxation would not produce a sufficient return to justify the tax, must be included within the system to make it just and equal.

A comparison of the amounts which would have been derived from the taxation of these non-taxed companies, with the cost to impose the tax, indicates the futility of any attempt to tax them. Taking as the value of the property of the exempted lines, the highest amounts proved in these cases, which is $264,262, the tax thereon at the average of the average rate would be but $4,643. The initial cost to make an appraisal of these companies and the clerical work of the State Board of Assessors in making the first assessment, would amount to approximately $12,00. (*Rec. pp.* 139, 141.) This includes nothing for the work of the board itself, in making its assessment, or of the Auditor General in collecting the taxes. The cost for clerical assistance in continuing the taxation from year to year, would be approximately $2,500, to which must be added to determine the actual cost for making the assessment from year to year, the time of the Board of Assessors and Auditor General in assessing, levying and collecting the tax. Obviously a tax of but $4,643 per annum, which requires to obtain it, the assessment of upwards of 400 different properties scattered throughout the state would not warrant its assessment. It is doubtful, however, if the tax would reach that amount, it being based upon the highest figures proved in this record and the experience of the board has demonstrated that the aggregate valuation for the companies taxed fell below the amounts reported. The aggregate cost from the reports for 1909 for these exempted companies after adding an average amount for the companies reporting no cost, is but $145,203, and the tax thereon at the average of the average rate would be but $2,551.

In view of these facts, is it to be said that the legislature possessed no discretion not to tax this property or that it must tax it to secure equality? Is there in its exemption such evidence of arbitrary and unreasonable selection or clear and hostile discrimination against the property taxed as to set aside the system where the aggregate of the exempted property is less than one-eightieth of the property taxed?

To say that the Fourteenth Amendment requires the inclusion of these exempted properties in order to insure the equality which the Fourteenth Amendment was intended to guarantee is to require an ironclad rule of equality, and this, it has in numerous cases been held, the Fourteenth Amendment does not require. Its provisions must be sensibly and rationally construed, and any reasonable, sensible and practical classification adapted to the purpose, of producing the governmental revenue without arbitrarily selecting the

members of the class to bear the burden, will stand its test.

The distinctions between those discriminations which are the result of a well ordered effort to equitably produce the needed revenue and discriminations which violate the amendment, appear in the following expressions:

In *Bell's Gap vs. Pennsylvania* (134 U. S., 237), it was said:

> "But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character unknown to the practice of our governments, might be obnoxious to the constitutional prohibition."

In *Florida Central vs. Reynolds* (183 U. S., 477), where in speaking of the amendment, it was said:

> "Doubtless it would prohibit a state from selecting some obnoxious person and casting upon his property the sole burden of taxation, or a burden differing from that cast upon others whose property was similarly situated, but it does not prevent a state from exercising its judgment as to the property to be taxed and the modes of taxation, providing all property similarly situated is treated in the same way."

In *Judson on Taxation* (Sec. 438), it was said:

> "This right to select, specialize and classify is for the purpose of best securing equality in taxation through the efficiency of the system adopted, and is clearly distinguished in its very nature from discriminations in classification which are made for the very purpose and which have the necessary result of imposing upon obnoxious classes a burden from which favored classes are relieved."

A particular tax can be laid or exemption granted, based upon classes fixed in part by the practicability of assessing and collecting the tax. The practical considerations in enforcing a tax are in themselves reason for making an exemption. In determining a general scheme of taxation, if the legislature determines that a certain class of property owners would find it easy to escape payment of the tax, it may treat that fact as a basis for classification and subject those property owners to some different scheme of taxation; if it finds that the enforcement against a particular portion of the class would be easier by applying some other scheme or system of taxation it may treat that as a basis for classification and apply another plan of taxation to those persons or their property, and if it determines that by reason of the

smallness of the property of a portion of the class taxed, taxation could not be profitably or practically had, it can exempt these small properties from the operation of that tax and subject them to taxation under some other method.

The point is this, practical considerations may be given their proper bearing by the legislature and may determine the propriety or impropriety of a particular classification for or scheme of taxation. This was the principle which permitted, in *Travelers Insurance Company vs. Connecticut* (185 U. S., 365), the application of one scheme of taxation of the shares of stock in a local corporation held by non-residents, and another scheme of taxation of the same shares held by residents.

In *Field vs. Barber Asphalt Company* (194 U. S., 618), the practical considerations arising from the presence, within the municipality, of resident property owners and their ability to protest promptly, placed them upon a distinct footing from non-residents with regard to making protest against certain street improvements; while in *District of Columbia vs. Brooke* (214 U. S., 150-1), the same principle was given effect in the language:

> "The act in controversy makes a distinction in its provision between resident and non-resident lot owners, but this is a proper basis for classification. Regarded abstractly as human beings, regarded abstractly as lot owners, no legal difference may be observed between residents and non-residents, but regarded in their relation to their respective lots under regulating laws, the limitations upon jurisdiction, and the power to reach one and not the other, important differences immediately appear. We said in St. John vs. New York, 201 U. S., at pages 633, 637, not only the purpose of a law must be considered, but the means of its administration—the ways it may be defeated. Legislation, to be practical and efficient, must regard this special purpose as well as the ultimate purpose. This was in effect repeated in Field vs. Barber Asphalt Co., 194 U. S., 618, where a privilege to protest against a street improvement given by the statute assailed to resident property owners and denied to non-resident property owners, was sustained, and the statute held not to violate the equality clause of the Fourteenth Amendment. See Travelers Ins. Co. vs. Connecticut, 185 U. S., 364."

Likewise in *Hatch vs. Reardon* (204 U. S., 151), practical considerations were permitted to control.

This principle was recognized by Mr. Judson in his work on taxation (Sec. 454), where he said:

> "Classification for taxation is not necessarily based upon any essential difference in the nature or condition of the various subjects. It may be based as well upon the want of adaptability to the same methods of taxation, or upon the impracticability of applying to the various subjects the same methods so as to produce just and uniform results, or it may be based upon just and well grounded considerations of public policy."

The principle that the legislature may eliminate those subjects of taxation which are not worth the trouble to tax them, finds support in *Florida Central vs. Reynolds* (183 U. S., 480), where it was said:

> "We must assume that the legislature acts according to its judgment for the best interests of the state. A wrong intent cannot be imputed to it. It may have found that the railroad delinquent tax was large, and the delinquent tax on other property was small and not worth the trouble of special provision therefor."

And in *Guthrie* on the Fourteenth Amendment (p. 135), it is said:

> "Reasonable exemptions have been upheld in some cases on the ground that the expense of collection would exceed the amount collected."

The Fourteenth Amendment does not compel impractical or inefficient taxation. The equality which it requires prohibits arbitrary selection, but not selection and elimination designed to secure practical and equal results. In the elimination of the smaller properties which could not be profitably taxed upon their value but a small amount of the telephone property is eliminated, and its elimination does not make against the validity of the classification, as that classification is good unless it appears that the legislature was actuated by a motive or purpose to unduly burden particular persons or property, and subject them to unusual or unreasonable burdens, beyond those borne by other members of the same class. As we have seen it is only clear, hostile and arbitrary discriminations which are prohibited by the amendment. Discriminations are permitted where they are not of that character, where they result in the course of an honest and intelligent effort to effect a reasonable equality of taxation. In a case where the system is designed to reach approximate and substantial equality, the exclusion from its

terms of those whom the legislature, with a due regard to the purpose for which it made the classification, determined could not as readily bear the tax, or should not be burdened with it, or as against whom its collection would be impracticable or unprofitable, cannot be said to be such arbitrary selection as to make an unconstitutional discrimination. It cannot, in this case, be said that there was any flagrant disregard of the principles of classification or invasion of the rights of those taxed. The burden of those taxed is not increased or affected, either theoretically or actually, by the exemption. They are required to bear their burden in a different way, and its amount is fixed by a different method, than is the burden imposed upon the exempted class, but those distinctions result, not from a legislative attempt to require the property of complainants to sustain the burden of government, while the property of others which should share the burden with them is exempted, but from an honest attempt to secure the needed revenues by the inauguration of a system which regards the practical considerations entering into the question of taxation and the differences between the property taxed and exempted. In such a case to set aside the system it requires something more than mere proof that a very small fraction of property, though identical in character, is left to be taxed by some other system than that applied to complainants.

Of a similar attack upon a taxing statute of Connecticut, it was said in *Travelers Insurance Company vs. Connecticut* (185 U. S., 370):

> "Now it may be true that as to the real estate held outside of the state the title and possession of the corporation are protected not by Connecticut, but by the state in which such real estate is found. But can it be said that there was any unjust discrimination between the different non-resident stockholders in the various corporations, or even between all the non-resident and resident stockholders, when the state, ignoring this matter of real estate, and considering that the corporation as a state institution was protected in all its corporate rights by the state, provided that non-resident stockholders should pay upon the market value of their investments in the property of that corporation? In respect to this the Supreme Court of Connecticut said (p. 280):
>
> 'This change as to the valuation of the property and franchise of a corporation owning taxable real estate, for the purposes of municipal taxation, may produce in

some instances more inequality, may be uncalled for or unwise (upon such considerations the action of the legislature is conclusive), but it certainly does not transmute the legislation in question from permissible taxation to a denial to citizens of other states of that common right in the use and enjoyment of property secured to our own citizens. The plan of taxation remains the same; after the change in valuation as before, it is simply a mode of securing to towns for purposes of municipal taxation the benefit of that part of the corporate property represented by shares owned by their inhabitants, and subjecting to state taxation that part represented by shares owned by non-residents, and which cannot be thus subjected to municipal taxation. Here is no hidden purpose to attack the rights of citizens of other states—no evidence that the underlying intention and real substance of the legislation is to hinder citizens of other states in acquiring and holding property. The alleged hindrance is confined to those who buy stock in corporations paying taxes on real estate. Only a small number of the corporations within the scope of the act own taxable real estate to any appreciable amount. Can it be said that the law regulating the taxation of half a dozen different kinds of corporations is really intended to hinder citizens of other states from owning stock in the small number of these corporations that may from time to time invest in taxable real estate; or that the real substance of the law changes from legitimate taxation to hostile and forbidden discrimination with each change of its investments by a corporation? Clearly the legislature is free from any sinister motive in this legislation.'

But further, the validity of this legislation does not depend on the question whether the courts may see some other form of assessment and taxation which apparently would result in greater equality of burden. The courts are not authorized to substitute their views for those of the legislature. We can only consider the legislation that has been had, and determine whether or no its necessary operation results in an unjust discrimination between the parties charged with its burdens. It is enough that the state has secured a reasonably fair distribution of burdens, and that no intentional discrimination has been made against non-residents.

This court has frequently held that mere inequality in

the results of a state tax law is not sufficient to invalidate it."

Darnell v. Indiana, 33 S. C. R., 120.

VI.

Classification may be based upon Corporate Character. The complainants are corporations. The statute under which they are organized originally contained a provision for taxation which became a part of all of their charters and a condition of their organization and continued existence. This provision was superseded by the present taxing act. Regardless of other reasons for its validity, this act was as to corporations made possible by reason of the reservation of the right to alter and amend corporate charters found in the constitution, and being a limitation upon their corporate charter. By reason of the creation of these corporations by the state and of this reserved authority, the state could attach to their continued existence such conditions as did not subvert or change the purpose of their organization, or deprive them of property without due process of law. This means—and a reservation of the right to alter and amend corporate charters has in numerous cases been so considered—that special and peculiar methods of taxation can be applied to corporations which are not applied to other property or persons, or institutions. (*Appendix I, p. 57 et seq.*)

It follows that complainants cannot object to their own inclusion in the taxing statute, and that as they cannot object for themselves, they are not entitled to urge the objection on behalf of other property, which they may claim is erroneously included and taxed under the system invoked.

VII.

The opinion of the district judge (*Rec. p.* 29), contains the following paragraph:

> "There has been, for some years, a continuing absorption by the larger companies of the small ones, and it is a frequent occurrence for a co-operative, non-profit making company, having gross annual earnings of less than $500 to sell its property to one of the larger companies having a large income. It follows as an undoubted fact, that the identical property devoted con-

tinuously to substantially similar use, may from year to year shift between the taxable and non-taxable class, solely on account of the ownership of the property."

It is evident that this is an incorrect conclusion. The larger and taxed companies are profit-making and public-serving institutions, the smaller and non-taxed companies are not profit-making institutions and not engaged in public service business. They are simply the means of bringing to the owner the service of the profit-making and public serving larger companies.

The acquirement by the profit-making and public service institutions of one of the properties of the other class accomplishes more than a change of ownership. It changes the character of the business in which the property is engaged. By uniting that property with and continuing to conduct it as a part of a public service institution, the character and purpose of its use is changed and it is taken out from the class of non-profit-making companies and placed in the class of profit-making and public-serving companies.

The validity of exemptions granted to certain designated persons or institutions is established; such exemptions have been granted to householders, old soldiers, charitable institutions, and in many other cases. It has never been regarded as an objection to the exemption that when the property so exempted passed to others it became taxable merely from the change in ownership.

It has not been considered as an objection to exemptions that they have been treated as personal to the then owners of the property and ceased upon its transfer to others.

Morgan v. Louisiana, 93 U. S., 219.

Memphis & Little Rock v. Commissioners, 112 U. S., 609.

Chesapeake & Ohio v. Miller, 114 U. S., 185.

Picard v. East Tennessee, Virginia & Georgia, 130 U. S., 637.

VIII.

The right of the legislature to make exemptions from any class which it may select for taxation is undoubted. In so doing its discretion is complete and its power absolute.

In taxation, in selecting the subjects for exemption, it is not held to the same rules as would apply in application of a police regulation. Its exemption may be to a portion of,

or even to certain selected properties in, the class taxed, and so far as the federal constitution is concerned it may even go so far as to make a contract with the owners of those properties selected for exemption that would place it beyond the authority of subsequent legislatures to tax. This subject is fully treated in *Appendix I*, (*p.* 21) where the cases are collected.

The exemption does not in this instance, increase the burden of those taxed and the selection of co-operative institutions possessing 1% in amount of the property taxed, or of profit-making institutions possessing 1/1111th of the property taxed, is not an excess of authority in the exercise of the right to create and grant exemptions.

IX.—THE APPELLANTS' BRIEF.

Pages 11-13: List of different characters of exchanges and lines.

The first four (*Brief p.* 11), viz: the City Exchange, Smaller City Exchanges, Village Exchanges, and Roadway Farm Lines, (should be "Farm Lines" as the term "roadway" only applies to the lines owned by farmers connecting with the switch-board of one of the larger companies, *Rec. pp.* 74, 177, 121, 81), all enter into the composition of the profit-making companies, such as the complainants or the Michigan State Telephone Company. (*Rec. pp.* 80, 90, 123, 125.) In addition, such companies serve, with exchange or toll service or both: *(a)* The Sub-License Company: *(b)* The Rural Contractor, and *(c)* The Roadway Farm Line.

Page 12: The Sub-License Company.

This type of company includes every separate organization giving telephone service, some of the sub-licensees listed by complainants being profit-making, some mutual or co-operative, and others switchboards serving independent farm lines. The term "sub-license company" as used by complainants and appellants is therefore not descriptive of any type of company, but of the fact of an organization separate from complainants and independent. For example, it lists under this description (*Rec. p.* 102). The Brooklyn Switchboard Association, composed of a switchboard worth $220 (*Rec. p.* 149 *et seq.*) belonging to the association which was used in switching for a number of independent lines owned by farmers, which

were of the roadway type. The appellant is therefore in error when it says, (*Brief, p.* 12):

> "The sub-license company operates a complete telephone system, and, except as to the extent of territory covered, is identical with the larger companies. It owns its own exchange and the system of lines which it operates."

Pages 12-13: The Rural Contract.

This is designed for rural service. There is no proof that any rural manager serves the people of any village, as is indicated in appellant's brief on page 13.

Page 13: Roadway Farm Lines.

The roadway plan contemplates lines built by farmers (*Rec. pp.* 74, 177, 121, 81). The appellant is in error where it says, (*Brief p.* 13):

> "Sometimes these lines are built and owned by the larger companies in connection with their other property."

Where the lines are built and owned by the larger companies they are not of the "roadway" type; they are an extension of the regular telephone into rural territory to serve whoever may desire to connect therewith. This is "Farm Line Service" (*Rec. p.* 123); they are not roadways nor within the Berry description of a roadway.

Appellants have confused the fact that their rural lines are on roadways with the oft repeated definition which its witnesses gave for "roadway lines." Under this caption the appellants make a further error in the statement, (*Brief, p.* 13):

> "A few are constructed by regular corporations organized for profit, but generally by mutual associations."

The fact is, that no "regular corporations organized for profit" are found in the roadway lists of exempted companies. The 19 exempted lines operated for profit are found principally in the sub-license lists.

Page 13. Competition.

There is no competition between the roadway and the profit-making company. Some of complainants' witnesses have asserted as a conclusion, that competition exists, but obviously such is not the fact. The roadway may prevent the profit-making company from installing some telephones, but that is not competition in this case, for the reasons:

(a) The roadway service is furnished by the profit-making companies, as the roadway lines run into their exchanges.

(b) The roadway has been brought into existence and stimulated by the profit-making companies for the purpose

not of establishing competition but of extending their business and service. (*Rec. pp.* 176, 187, 121.)

(c) The roadway line serves none but its own members and owners.

(d) The roadway does and can do no toll business. (*Rec. p.* 93.)

(e) The roadway line is but 7 or 8 miles long and is used by but 8 or 9 members, as a rule.

Pages 14-16.

Because the statute makes the basis of classification the amount of earnings, appellants insist that unless the classification is valid with that as its sole basis, the statute must fail. The cases referred to are those where rules of interpretation, to ascertain the meaning of an act, are stated and applied. This is not a question of statutory construction; the meaning of the act in certain. The question is whether, given that meaning, complainants are unduly discriminated against. The question is one of fact—whether in the classes as arranged, regardless of the basis, there are properties exempted which constitute discrimination against complainant. To answer the question we must examine the character of the properties found in the different classes; if those exempted are different from those taxed and complaining, there is no undue discrimination.

Page 21.

Appellants assume the classification to be based upon the character of ownership and for that reason not permissible. The character of ownership has nothing whatever to do with the classification made.

Pages 22-23.

The appellants confuse the Michigan constitution, requiring assessments to be upon "a uniform rule", with the requirements of the Fourteenth Amendment upon which it has planted its case. It is one question whether the uniform rule be violated, and one which is not raised by the pleadings and proofs in this case, and another whether the Fourteenth Amendment is contravened. Upon neither basis can appellants' objections be sustained.

Page 23.

The appellants say:

> "The proofs show, without contradiction, that the service rendered by the smaller companies to farmers along the highways is of precisely the same character as that

furnished by the larger companies operating similar lines in similar localities."

The appellants have evidently lost sight of the fact that service is not "rendered by the smaller companies to farmers along the highways." The service is that furnished by the switchboard of the larger company, including complainant, to the farmers, over their own lines, which appellants term "smaller companies." The farmer, whether upon the profit-making line or upon the roadway belonging to himself and his associate farmers, receives service in the same way, but that service is (except in the case of the rural manager) furnished by one of the larger companies. Where the rural manager exists the service is furnished by him through operating switchboard of one of the larger companies over lines owned by the farmer.

Page 25.

Mr. Parker did not, as stated on this page, make any estimate of the value of the exempted properties. He merely assembled and classified the values furnished by complainants' witnesses to ascertain what value they claimed for all exempted companies, and supplemented that by figures from the reports where complainants' witnesses stated no value. (*Rec. pp.* 206-7.)

Page 33.

There is no claim that complainants did not know that the act in question as applied to them was being passed, or that they were not permitted to be heard thereon, and did not appear at committee meetings and attempt to defeat the measure.

The fact is, that the bill was widely advertised, that complainants knew of its introduction and progress in the legislature, and appeared before legislative committees in objection thereto. The transcript of the record on file in this court, but unprinted (p. 149), indicates this to be the fact in the testimony of Mr. Berry, following:

"Q. Did you appear before the Legislature last winter or before a committee of it, when this law was being discussed?

A. No sir.

Q. Did some one appear for your company?

A. I think so.

Q. Do you know who it was?

A. I think Mr. Kingsbury did, I am not sure.

Q. You knew it was being passed?

A. I knew there was such a bill before the Legislature.
Q. Before it was passed?
A. Yes."

SECOND.

The objection under the 14th amendment must come from those injured by the classification.

While substantially all the exempted property is made up of the property of institutions forming a separate class, there was in 1909 included (though perhaps erroneously) in the property taxed, that of certain institutions or companies like the exempted. There is not sufficient proof of the amount or character of such property, or extent of the business done by such companies to form the basis of a claim of discrimination. (The District Judge so held, *Record p.* 29.)

That, however, becomes immaterial, as none of the members of this class are objecting to the statute's validity. The complainants, who are objecting, conduct their business and use their property in a different manner. It matters not to them that the property of companies like that of those exempted is taxed. That is neither a grievance of which complainants can complain nor a discrimination against them. The rule is established that in a case of this character an institution as to which the classification would be valid cannot object to the classification by reason of the inclusion in the class taxed and thereby discriminated against, of persons or property which is of a different character from that of those complaining. The reason for the rule is evident and is, that to be entitled to relief there must be discrimination injurious to the complaining party. In this case there is no discrimination affecting complainants of which they can complain unless they have the right to complain on behalf of other persons or property. It is manifest that this is not the grievance of complainants. The cases which are decisive upon this question are examined in another part of this brief. (*Appendix I, p. 35, et seq.*)

It will be sufficient here to refer to *Hatch vs. Reardon* (204 U. S., 160), which well states the general rule in such a manner as to put the question at rest; it was there said:

> "But there is a point beyond which this court does not consider arguments of this sort for the purpose of invalidating the tax laws of a state on constitutional

grounds. This limit has been fixed in many cases. It is that unless the party setting up the unconstitutionality of the state law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all."

THIRD.

The sufficiency of the title of act 49 of 1909 to permit taxation thereunder of the property of telephone and telegraph companies.

The title of act 49 of 1909 is claimed to be an insufficient compliance with section 21 of article V of the constitution, which provides, "no law shall embrace more than one object, which shall be expressed in its title."

We may well preface the argument upon this question, with a statement of the rule, applicable in this case, that:

> "The objections should be grave, and the conflict between the statute and the Constitution palpable, before the judiciary should disregard a legislative enactment upon the sole ground that it embraced more than one object, or if but one object, that it was not sufficiently expressed by the title."
>
> Montclair v. Ramsdell, 107 U. S., 147, 155.
>
> Ross v. Aguirre, 191 U. S., 60, 64.

I.

The purpose of this constitutional provision has been fully subserved by the title in question.

That purpose has been expressed in many cases. Thus in the leading case of *People vs. Mahaney* (13 Mich., 494), it was said:

> "But it is insisted that the whole law is unconstitutional and void, because in violation of section twenty of article four of the constitution, which provides that 'no law shall embrace more than one object, which shall be expressed in its title.' The history and purpose of this constitutional provision are too well understood to re-

quire any elucidation at our hands. The practice of bringing together into one bill subjects diverse in their nature, and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its own merits, was one both corruptive of the legislator and dangerous to the state. It was scarcely more so, however, than another practice, also intended to be remedied by this provision, by which, through dexterous management, clauses were inserted in bills of which the titles gave no intimation, and their passage secured through legislative bodies whose members were not generally aware of their intention and effect. There was no design by this clause to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, and thus multiplying their number; but the framers of the constitution meant to put an end to legislation of the vicious character referred to, which was little less than a fraud upon the public, and to require that in every case, the proposed measure should stand upon its own merits, and that the legislature should be fairly notified of its design when required to pass upon it."

Matter of Charles Hauck, 70 Mich., 403.

In *Kurtz vs. People* (33 Mich., 281), the purpose was stated as follows:

"It is a very wise and wholesome provision, intended to prevent legislators from being entrapped into the careless passage of bills on matters foreign to the ostensible purpose of the statute as entitled. But it is not designed to require the body of the bill to be a mere repetition of the title. Neither is it intended to prevent including in the bill such means as are reasonably adapted to secure the object indicated by the title. It would not be profitable to discuss those extreme cases where the adaptation of means to ends is so far fetched and unnatural as to be directly and palpably misleading."

In *Bissell vs. Wayne Probate Judge* (58 Mich., 238), it was said:

"The object of confining acts to the purview of their titles is to prevent the legislature as well as the people from being misled as to their contents."

The purpose being to inform generally the legislature and public, regarding prospective and attempted legislation, and to prevent their being misled, it follows that the title to any act which is so drawn that it cannot mislead the public or

legislator, and which in general terms gives intimation of what is to be enacted, is sufficient.

In cases in determining the constitutional requirement to be satisfied, the court, while recognizing that the title was not as definite and specific as it well might have been, points to the fact that the title was such that neither the legislature nor the public could be misled or deceived.

People vs. Howard, 73 Mich., 14.

II.

The courts have uniformly given to this provision a construction which would sustain the acts, if possible, and have not applied hypercritical or narrow rules of construction, but, where the general purposes of the constitutional provision are fulfilled in the title, have invariably declared the statute to sufficiently conform to it.

In *People vs. State Insurance Co.* (19 Mich., 398), it was said:

> "We must give the constitutional provision a reasonable construction and effect. The constitution requires no law to embrace more than one object, which shall be expressed in its title. Now the object may be very comprehensive and still be without objection, and the one before us is of that character. But it is by no means essential that every end and means necessary or convenient for the accomplishment of the general object, should be either referred to or necessarily indicated by the title. All that can reasonably be required is, that the title shall not be made to cover legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection."

In *Inkster vs. Carver* (16 Mich., 488), in speaking of the validity of an act measured by this constitutional provision, it was said:

> "Before the court will declare an act invalid as opposed to the constitution, the repugnancy of the law to the constitution must be manifest; and if the conflict is supposed to arise from any peculiar interpretation of the act, the law should be sustained and such interpretation overruled, unless the particular interpretation is imperatively required."

In *Hall vs. Burlingame* (88 Mich., 440), it was said:

> "Legislative enactments will not be construed in a narrow or technical sense. The details of an act need not be set forth in the title. The provisions of the act must be germane to the title, and tend to the accomplishment of the purpose stated in it."

In *Cooley's Constitutional Limitations* (7th Ed.) 209, the rule was expressed as follows:

> "There has been a general disposition to construe the constitutional provision liberally, rather than to embarrass legislation by a construction whose strictness is unnecessary to the accomplishment of the beneficial purposes for which it has been adopted."

In *Ryerson vs. Utley* (16 Mich., 277), it was said of this constitutional provision:

> "We have heretofore had occasion to consider this section, and have said of it that it ought to be construed reasonably, and not in so narrow and technical a sense as unnecessarily to embarrass legislation."

In *Matter of Hauck* (70 Mich., 402), the court expressed the rule of construction in the language:

> "In testing acts of the legislature by this clause of the constitution, we should not, on the one hand, be so hypercritical as to require every matter of detail to be stated in the title, nor, on the other hand, so liberal as to render the constitutional provision nugatory. But regard should be had to the letter and spirit of the constitution, the evils it was intended to prevent, the rights it was intended to preserve, and, so regarding it, to test the act which is claimed to be repugnant to this clause candidly and justly, and, if it shall appear that the constitutional provision has been disregarded, to perform the duty enjoined on us by our oath of office, and declare the act unconstitutional and void."

From the foregoing cases the following applicable rules can be deduced:

(a) That titles are intended for purposes of information to the legislature and the public of the subjects of proposed legislation, and that any title which fairly and reasonably gives notice of the things enacted under it, is sufficient.

(b) That the constitutional provision is to receive a reasonable construction, taking into consideration its purpose, and one which will, if possible, sustain the acts passed.

(c) That although the title may be general in terms, if

what is enacted under it has some connection with it, or is such that the title gives some intimation of it, it is sufficient.

III.

With these general rules we may proceed to an examination of the title of the particular act in question. To determine whether that title reasonably comprehends and gives notice of what was intended to be enacted under it, requires examination of the title, enacting section and amended title; they are as follows:

> "*An act to amend the title* and sections one, four, five six, eight, nine, ten, thirteen, fourteen, eighteen and twenty-one of act number two hundred eighty-two of the Public Acts of nineteen hundred five, entitled 'An act to provide for the assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act.'
>
> The People of the State of Michigan Enact:
>
> Section 1. The title and sections one, four, five, six, eight, nine, ten, thirteen, fourteen, eighteen and twenty-one, of act number two hundred eighty-two of the Public Acts of nineteen hundred five, entitled 'An act to provide for the assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act,' are hereby amended to read as follows:
>
> TITLE.
>
> An act to provide for the assessment of the property, by whomsoever owned, operated or conducted, of railroad companies, union station and depot companies,

telegraph companies, telephone companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight companies, and all other companies owning, leasing, running or operating any freight, stock, refrigerator or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this state, and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act."

The point, to which we first direct attention is, that this title, in itself, gives notice that the scope of act 282 of 1905, was to be extended, and that that act was by act 49 of 1909, to be amended to include within its terms, and to be subject to taxation, property other than that which had previously been taxed by the system.

The material words of the title and those controlling in this connection are, that it was "*an act to amend the title*" and certain named sections of the act providing for assessment and levying of taxes by a State Board of Assessors.

In setting forth the purpose "*to amend the title*" to act 282 of the Public Acts of 1905, attention was called to the legislative purpose so expressed, to enlarge or change the scope of act 282 of 1905. Under no other circumstances would it be necessary to amend the title and the notice or statement in the title to act 49, that we are about to "*amend the title*" to act 282 of 1905, is a sufficient notice to those who might be affected by assessment through a State Board of Assessors to examine the body of the act, to ascertain whether its provisions would include them or their property.

The authority of the State Board of Assessors in making assessments, could be extended to but a limited class of property, namely, that of corporations and public service property, and this title directed the attention of all corporations and owners of such property to the fact, that in the extension or change of the system of taxation through a State Board of Assessors, their property might be included in or excluded from that system.

The title used is equivalent to a title such as, "An act to extend the scope of act 282 of the Public Acts of 1905, permitting assessments by a State Board of Assessors, and to amend the title so as to include therein added property."

No question could have been raised to the sufficiency of such a title, and yet, it expresses nothing more than is expressed in the title actually used.

IV.

The complainants' argument as to the title's sufficiency is entirely beside the question. It ignores the fact that the title is "*an act to amend the title,*" and the cases cited are inapplicable.

When the object indicated by the title is to amend the title of the prior law, all interested are put upon inquiry,—they are notified that there is an amended title following, which they must investigate to ascertain the nature of the amendment proposed.

In *People vs. Parvin*, 14 Pac. (Cal.), 783, the court said:

> "The reason of the requirement that the subject shall be expressed is to prevent legislators being entrapped by false titles. * * * This reason does not require the title to give the substance of the bill. To give the substance of the bill would be to make the title almost as cumbrous as the bill itself, which would tend to defeat rather than to accomplish the purpose of the requirement. It would be to make the title an index, abstract, or catalogue of the contents of the bill, which has been held to be unnecessary. * * * Now, *if the purpose was not to apprise the legislators of the substance of the bill, it must have been to put them on inquiry as to what was sought to be done.* And we think a title which shows that it is intended to change a specific section of a specified statute is sufficient to put the legislators on inquiry. This seems to us to be the reasonable construction."

Several cases are directly in point upon the sufficiency of this title:

In *City of Beatrice vs. Edminson* (117 Fed. (C. C. A.), 427), the constitution of Nebraska was like ours.

An original act entitled:

> "An act to provide for the organization, government and powers of cities of the second class having more than ten thousand inhabitants."

was amended under a title as follows:

> "An act to amend *the title* and sections one, two, three

and four of an act entitled, 'An act to provide for the organization, government and powers of cities of the second class having more than ten thousand inhabitants,' approved March 1, 1883."

Under this title the title to the original act was amended to read:

"An act to provide for the organization, government and powers of cities of the second class having more than five thousand inhabitants."

Of the contention that the amendatory act was obnoxious to the constitution, the court said:

"That title * * * *clearly and plainly expresses the entire subject treated by the act, the amendment of the title and of the act itself* relative to the organization and government of cities of the second class, and the bill treats of but one subject, the subject expressed in the title. * * * In the case at bar the evidence and the finding are to the effect that the words, 'the title and' were contained in the title to the amendatory act of 1885, when it was passed. That title clearly expressed the subject of the act, the act was constitutional and valid" (117 Fed., pp. 430, 431).

In *Dyker Meadow Land Co. vs. Cook* (38 N. Y. S., 222), the original act was entitled:

"An act relating to the assessment of real property in the city of Brooklyn, county of Kings, owned and occupied by charitable corporations, societies or institutions."

The act was amended under a title, reading:

"An act to amend the title of and to amend an act entitled 'An act relating to the assessment of real property in the city of Brooklyn, county of Kings, owned and occupied by charitable corporations, societies or institutions,' passed May 24, 1878."

The amendatory act extended to the entire county. Of the contention that the amendatory act was unconstitutional because its subject was not expressed in its title, the court said:

"The exemption of the real estate from assessments was the purpose of the legislature, and the sole object of the law. The amendment of the title of the act was not a separate subject, but a thing necessary to carry out that purpose and effect the one subject, to-wit, the

exemption of the land. All that the act contains is the necessary change in the title and body of the law, and its provisions relate to the details of one general subject. It was not essential that the amendment should appear in the title. An expression of the general subject is sufficient." * * *

"There is nothing misleading or deceptive in the title of the act under consideration. To any one reading it, it appears that it amends the earlier law and the title to that law; and we are of the opinion that this was a sufficient expression of the subject of the act. It follows that it does not violate the constitutional provision referred to."

V.

It is true that the title in declaring its intent to extend the operation of the act by stating its purpose to "*amend the title*" was general, but it is settled that the generality of a title is no objection.

Thus in *Cooley's Constitutional Limitations* (7th Ed.), page 206, the rule is stated:

"The generality of a title is therefore no objection to it, so long as it is not made a cover to legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection. The legislature must determine for itself how broad and comprehensive shall be the object of a statute, and how much particularity shall be employed in the title in defining it."

In *People vs. State Insurance Co.* (19 Mich., 398), it was said:

"The object may be very comprehensive and still be without objection, and the one before us is of that character."

Board of Supervisors vs. Auditor General (65 Mich., 412).

People vs. Howard (73 Mich., 13, 14).

In *Grand Rapids vs. Circuit Judge* (93 Mich., 472), it was said:

"If the title expresses a general purpose, all matters fairly and reasonably connected with that purpose, and all measures which would facilitate its accomplishment,

would not be in conflict with the above provision of the constitution. This has been so many times decided by this court that the cases need not be cited."

In *Gravel Road Company vs. Paas* (95 Mich., 379), it was said:

"It is said in Cooley's Constitutional Limitations, page 144, that the generality of a title is no objection to it, so long as it is not made a cover to legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection."

In *Soukup vs. Van Dyke* (109 Mich., 681), it was said:

"The provision requiring the object to be expressed in its title has not received a construction which renders it necessary to set out in detail the purposes of the act. To place such a construction on it would make it necessary that the title be as full as the act itself. On the contrary, the rule is universal, as expressed in Cooley, Const. Lim. (6th Ed.), 172, that 'the generality of the title is no objection to it, so long as it is not made a cover to legislation incongruous in itself, and which, by no fair intendment, can be considered as having a necessary or proper connection.' *People vs. Mahaney*, 13 Mich., 481. The title is sufficient if it fairly and reasonably announces the object, and that is a single one. If this requirement be observed, the legislature must determine for itself how broad and comprehensive shall be the object of a statute, and how much particularity shall be employed in the title in defining it."

Common Council of Detroit vs. Schmid (128 Mich., 400).

It being settled that the title of an act is not objectionable by reason of its generality and the legislature being the judge of how specific or comprehensive the title shall be, it follows, that as the title in question through the expression of an intent to "*amend the title*" of act 282 of 1905, sufficiently comprehended within its terms an extension of the rules of taxation therein prescribed to other corporations or properties of the character of those previously taxed thereby, or of those permitted to be taxed by a State Board of Assessors.

It is unnecessary to name in the title of a taxing act, or of an act regulating corporations or providing for their creation, the corporations or the class of corporations affected thereby; thus the act in question would have been sufficient, had it borne a title such as:

"*An act to provide for the taxation of corporations and*

property engaged in public service," or *"An act to prescribe the duties and powers of the State Board of Assessors,"* or *"An act to determine the classes of corporations which shall be taxed by the State Board of Assessors."*

If these titles would be sufficient, and under the decided cases they would be of conceded legality, it follows that where the title to an act refers to the State Board of Assessors, and provides for the assessment by it of the property of certain named corporations, that an amending act specifically entitled *"an act to amend the title"* and certain named sections of that act is sufficiently comprehensive to permit the inclusion in the original act of other corporations. The title would be just as definite as would any of the titles illustrated above, and would be no more open to constitutional objection.

The detail in the title to the original act of certain corporations while restrictive, would not limit what could be included under an amended title, where the title to the amended act gave notice of the intent to amend the title.

Soukup vs. Van Dyke (109 Mich., 681).

VI.

Where the title expresses the intent to amend a certain named section, it has always been held that it gives notice that something germane to that section is to be inserted, and the intention of the citizen is directed to that particular subject. In this case the title gave notice of an intent to amend the title of a previous act, and upon like principle this gave notice that the scope of the statute was to be enlarged or diminished.

Upon this subject it was said in *Attorney General vs. Amos* (60 Mich., 375):

> "The first object which it claimed is embraced in the act, and not expressed in its title, is the enlargement of the territorial limits of the city. This court, as well as all persons interested, will take notice that section 3 of chapter 1 of Act No. 326 of the local laws of 1883 particularly defined the boundaries of the city of Detroit, and embraced no other object. The title, therefore, of an act which is stated to be an amendment of such section necessarily imports that the boundaries of the municipality are to be changed by the amendment, and hence the object; that is, the alteration of the boundaries

is sufficiently expressed in the title which states that the act is to amend the section prescribing the boundaries of the city. The attention of the citizen is, by this title, directly called to the object sought to be attained by the enactment; and he is thereby apprised that the legislature intends either to enlarge or diminish the territorial boundaries of the city."

See Grimm vs. Secretary of State (137 Mich., 138).

VII.

The complainants' objection is hypercritical; while objections to the validity of the title to a statute are ordinarily regarded as technical, this objection is particularly so, because the title to act 49, taken in connection with the amended title, which appears directly under it, gives full, complete and definite expression of the intent to include telegraph and telephone companies.

Keeping in view the purpose of the constitutional provisions and the fact that no court indulges in the practice of declaring acts unconstitutional for merely technical objections to their titles, but only does so where the title is such as to mislead those interested, there is no reasonable argument that can be made to the effect that the title in question is insufficient. It directs attention to the fact that the title to the act is to be amended, which is in itself a notice that there is to be an extension or change in the corporation or property to which the act applies, and the title is immediately followed with the amended title under the caption "TITLE."

VIII.

If it be said that the amended title to which attention is directed, was in the body of the act, and not a part of the title, this is completely answered by reference to a practice repeatedly indulged in and sustained. The title "*an act to amend the title,*" was sufficient to call attention to the fact that lower in the act there was an amended title which explained the full scope of the amendment. It called to the attention of persons interested that there was someting further to look for, and that their interests might be affected under the new title.

The practice of amending a named act, under titles not

describing either the purport of the act or amendment has been repeatedly sustained, where the amendment was of a character coming within the title to the original act.

Common Council of Detroit, 128 Mich., 402.
People vs. Howard, 73 Mich., 14.

As has also the practice of amending sections of the compiled laws by a reference to the section number.

Comstock vs. Superior Court Judge, 39 Mich., 196.
Callaghan vs. Chipman, 59 Mich., 616.

In such cases where the intention expressed in the title is to amend a named section, or a named act by number, the title only gives notice of what may be included in the body of that act by reference to the act or section to be amended. This involves a recourse to something other than the title to determine what is to be included. Even if, in this case, recourse to the amended title was required to determine that it was applicable to telephone and telegraph companies, it was not therefore insufficient, as it called attention of those interested to the fact that an amended title was provided, which was an index to the change.

The case of *People vs. Howard* (73 Mich., 14), is conclusive upon the validity of this title. A chapter of the compiled laws is entitled "*Of offenses against the lives and property of individuals;*" this chapter included certain specific crimes and felonies. Under the title:

> "An act to amend chapter 154 of the Revised Statutes of 1846, being chapter 180 of the Compiled Laws, entitled 'Of offenses against the lives and property of individuals,'"

a new felony was created, and in holding the act valid, the court said:

> "Now, although these titles of the chapters of the Compiled Laws are not adopted by the legislature, the compilations are, and these titles are familiar and known to all who ever examine the laws. When the chapters are referred to, and they are identical in sections, and the title as used by the compiler is substantially stated, and an amendment is proposed to such chapter, the public are notified that a change is proposed in the law relating to the class of offenses treated of in such chapters, and that amendment may always be made by adding a new section, as an act is amended by adding a new section. The people are challenged by the title to the chapter sufficiently, it seems to me, to call their atten-

tion to the bill, if they have any interest in the criminal laws; and it is well known that there is more interest in this class of the laws than any other."

IX.

Another consideration conclusively establishing the sufficiency of the title, is that which arises from the general practice of amending titles and extending the scope of legislative acts, which has been followed for many years. As will be pointed out, the legislature has in many instances used this identical form, and has never in any instance, so far as we can discover, used any other in the amendment of titles to permit the addition of new matter not comprehended under previous titles. If the case were one of doubt, the legislative practice would establish it in favor of the validity of the statute in question.

Upon this it is sufficient to refer to but two cases; in *City of Detroit vs. Chapin* (108 Mich., 142), the question involved was the effect of the practical construction of a constitutional provision by a co-ordinate branch of the government, which had been indulged in for a period of twenty-two years. The court in giving controlling effect to its construction said:

> "We are cited to instances where this construction has been given to this section by the governors, and there are numerous acts whose validity depends on the question involved here. If the question were more doubtful than it is, we might properly consider the force of a practical construction of co-ordinate branches of government, acquiesced in by the general public for a long period. In commenting upon this subject, Mr. Justice Cooley says:
>
> 'Great deference has been paid in all cases to the action of the executive department, where its officers have been called upon, under the responsibilities of their official oaths, to inaugurate a new system, and where it is to be presumed they have carefully and conscientiously weighed all considerations, and endeavored to keep within the letter and the spirit of the constitution. If the question involved is really one of doubt, the force of their judgment, especially in view of the injurious consequences that may result from disregarding it, is fairly entitled to turn the scale in the judicial mind.' Cooley, Const. Lim. (6th Ed.), pp. 83, 84.

He supports it by numerous cases.

See, also, *Attorney General vs. Glaser*, 103 Mich., 409; *Hart vs. McElroy*, 72 Mich., 453; *People vs. Maynard*, 15 Mich., 470; *Horey vs. State*, 119 Ind., 386; *Biggs vs. McBride*, 70 Ore., 640; *Castro vs. DeUriate*, 16 Fed., 93; Cooley's Const. Lim. (6th Ed.), pp. 84-86; and notes; *Stuart vs. Laird*, 1 *Cranch*, 299.

Our attention is called to instances where the governors of this state have signed bills under similar circumstances, one as early as 1873, and many since."

In the recent case of *Board of Education vs. Board of Assessors* (133 Mich., 116, 120), the court in determining whether a statute conformed to constitutional principles, permitted itself to be controlled by the legislative construction, and said:

"But it is urged in behalf of the power exercised by the board in this case, that if the act is subject to this construction, it is in conflict with the constitutional amendment itself. In determining this question, under well settled rules, we are not to ignore the contemporaneous construction placed upon the amendment by the legislature itself."

This practical construction finds evidence in the following statutes, which will all be invalid if complainants' objection be declared good:

1. *Act 482 of Local Acts of 1887* (p. 596), amending the title and act authorizing Bay county to provide a bridge across Saginaw river.
2. *Act 147 of Public Acts of 1895* (p. 286), amending the title and act authorizing register of deeds to procure seal.
3. *Act 118 of Public Acts of 1895* (p. 241), amending the title and an act relative to fish chutes.
4. *Act 32 of Public Acts of 1895* (p. 119), amending title and act for incorporation of certain churches.
5. *Act 141 of Public Acts of 1897* (p. 168), amending the title and an act for adoption and change of name of minors.
6. *Act 365 of Local Acts of 1897* (p. 345), amending the title and act relative to contagious disease in St. Clair county.
7. *Act 266 of Public Acts of 1899* (p. 440), amending the title and an act for the incorporation and regulation of railroad companies, being the general railroad law.
8. *Act 139 of Public Acts of 1899* (p. 210), amending the title and act establishing a home for soldiers and others.
9. *Act of 190 of Public Acts of 1901* (p. 268), amending the

title and an act to regulate fidelity and other insurance.

10. *Act 181 of Public Acts of 1901* (p. 256), amending title and an act relative to Grand Army buttons.

11. *Act 180 of Public Acts of 1903* (p. 253), amending title and an act relative to scholarship in the university.

12. *Act 133 of Public Acts of 1903* (p. 161), amending title and an act for incorporation of salt manufacturing and of mercantile companies.

13. *Act 124 of Public Acts of 1903* (p. 147), amending title and an act to define limits of Wild Fowl Bay.

14. *Act 93 of Public Acts of 1903* (p. 118), amending title and act to protect fish in Kalamazoo River and tributaries.

15. *Act 63 of Public Acts of 1903* (p. 84), amending title and act to protect and regulate fishing.

16. *Act 17 of Public Acts of 1903* (p. 21), amending title and act relating to mechanics' liens.

17. *Act 171 of Public Acts of 1905* (p. 239), amending title and act to regulate and inspect manufacturing plants and women and child laborers therein.

18. *Act 32 of the Public Acts of 1905* (p. 48), amending title and act relative to placing criminals on probation.

19. *Act 459 of Local Acts of 1905* (p. 335), amending the title and an act to create the office of drain assessor in Allegan county so as to include other counties.

20. *Act 309 of Public Acts of 1907* (p. 409), amending title and act to establish highway department.

21. *Act 172 of Public Acts of 1907* (p. 228), amending title and act in relation to insurance and surety companies.

22. *Act 140 of Public Acts of 1907* (p. 177), amending title and act for regulation and inspection of manufacturing and other establishments and women and child labor therein.

23. *Act 83 of Public Acts of 1907* (p. 103), amending title and act relative to herring fisheries.

24. *Act 619 of Local Acts of 1907* (p. 795), amending title and act relative to drains in Kent and Tuscola counties so as to include Bay county.

25. *Act 291 of Public Acts of 1909* (p. 676), an act to amend the title and act to regulate and license manufacture and sale of liquors, being the general liquor law.

26. *Act 197 of Public Acts of 1909* (p. 363), amending title and act to permit foreign mutual insurance companies to do business in Michigan.

27. *Act 56 of Public Acts of 1909* (p. 92), amending title and act to authorize the sale of lands devised and bequeathed.

28. *Act 51 of Public Acts of 1909* (p. 87), amending title

and act to prohibit carrying of inflammable materials on passenger trains.

29. *Act 49 of Public Acts of 1909* (p. 77), amending title and act to provide for assessment of property of corporations by the State Board of Assessors.

30. *Act 24 of Public Acts of 1909* (p. 29), amending title and act relating to warehousemen and warehouse receipts and liens.

31. *Act 326 of Local Acts of 1909* (p. 12), amending title and act relative to drain commissioners in certain townships.

32. *Act 15 of Public Acts of 1911* (p. 18), amending title and act relative to organization and powers of fire and insurance companies.

33. *Act 69 of Public Acts of 1911* (p. 97), amending title and act regulating steam vessels.

34. *Act 125 of Public Acts of 1911* (p. 184), amending title and act relative to gifts for religious, educational, charitable and benevolent purposes.

35. *Act 179 of Public Acts of 1911* (p. 303), amending title and act relative to an additional circuit judge for the seventeenth judicial circuit.

36. *Act 203 of Public Acts of 1911* (p. 351), amending title and act providing for the incorporation of cities.

37. *Act 205 of Public Acts of 1911* (p. 358), amending title and act prohibiting misrepresentation by life insurance companies.

38. *Act 212 of Public Acts of 1911* (p. 366), amending title and act authorizing the board of supervisors of any county to designate any bank as a depository of county funds.

FOURTH.

Complainants are entitled to no relief in equity—a complete and adequate remedy at law exists.

The case in which a court of equity may be called upon to restrain the collection of a tax is rare, and such a case must present, not only an illegal or void tax, but in addition, must fall within some recognized head of equitable jurisdiction, *and* there must be no adequate remedy at law.

Tested by this rule the bills do not state cases for an injunction; they base the right to injunction upon three claims:

(a) That the tax and statute under which levied, are illegal and void.

(b) That irreparable injury will be caused to the complainants if this tax be enforced against their property, and *(c)* That they own real estate in Michigan upon which the tax is a lien, clouding the title thereof.

(1.) There is no necessity to spend time upon the point that the mere illegality or invalidity of a tax does not justify restraining its enforcement. This is the settled rule.

Shelton vs. Platt, 139 U. S., 591.
Allen vs. Pullman's Palace Car Co., 139 U. S., 658.
Arkansas Building & Loan Ass'n vs. Madden, 175 U. S., 269.
Pacific Express Co. vs. Seibert, 142 U. S., 339.
Pittsburg C. C. & St. L. vs. Board of Public Works, 172 U. S., 32.
Dows vs. Chicago, 11 Wall., 108.
Boise Artesian Water Co. vs. Boise City, 213 U. S., 276, 283.
Youngblood vs. Sexton, 32 Mich., 406.

(2.) That complainants have not stated a sufficient case, through the claim that irreparable injury will result from the enforcement of the tax against their property, is equally clear. The bills make the claim of irreparable injury in most general terms, without alleging any of the details which would contribute to or constitute the injury; the bills are not in this respect aided by the proofs, and it is impossible to imagine how any injury could result to the complainants which they could not obviate by payment of the tax and suit to recover. Upon this point it is sufficient to refer to the cases of,

Shelton vs. Platt, 139 U. S., 591.
Arkansas Building & Loan Ass'n vs. Madden, 175 U. S., 269.
Indiana Manufacturing Co. vs. Koehne, 188 U. S., 690.

Shelton vs. Platt (139 U. S., 591), was a bill filed on behalf of the United States Express Company to restrain collection of the Tennessee franchise tax as unconstitutional. The bill alleged irreparable injury and damage through interference with complainant's business, should the tax be enforced by distress and sale of its property. The Tennessee statute permitted the tax to be paid under protest and authorized suit at law to recover it. The court determined that the case presented no ground for equitable relief, saying, (p. 595):

"When a tax is assessed as a personal charge against

the party taxed, or against his personal property, it is difficult to suggest any ground of equitable jurisdiction. Presumptively the remedy at law is adequate. If the tax is illegal and the party makes payment, he is entitled to recover back the amount. The case does not differ in this regard from any other case in which a party is compelled to pay an illegal demand; the illegality alone affords no ground for equitable interference, and the proceedings to enforce the tax by distress and sale can give none, as these only constitute an ordinary trespass. To this point the decisions are numerous. The exceptions to this rule, if any, must be of cases which are to be classed under the head of irreparable injury.

Irreparable injury is the sole ground upon which jurisdiction in equity can be regarded as invoked in this case. The jurisdictional averments are: 'That the property of said United States Express Company in Tennessee is employed in interstate commerce in the said express business, and necessary to the conduct of it; that if seized by the said sheriff it will greatly embarrass the company in the conduct of such business and subject it to heavy loss and damage, and the public served by it to great loss and inconvenience.' And 'that your orator and the United States Express Company are without adequate remedy at law in the premises.'

The latter allegation is a mere matter of inference, and it is necessary that by facts averred or proven the conclusion should be made out. The answer denied, in the language of the previous motion, that any irreparable injury or other ground of equitable jurisdiction was shown in the bill, and asserted that the plaintiff had full, adequate and complete remedy at law under the act of 1873. As the case was tried on bill, answer and replication, it is taking the most favorable course for complainant to determine whether the decree must stand or fall by the averments of the bill alone. But testing it in that way, we do not see how it can be sustained. The trespass involved in the levy of the distress warrants was not shown to be continuous, destructive, inflictive of injury incapable of being measured in money, or committed by irresponsible persons. So far as appeared, complete compensation for the resulting injury could have been had by recovery of damages in an action at law. There was no allegation of inability on the part of the express company to pay the amount of the taxes

claimed, nor any averments showing that the seizure and sale of the particular property which might be levied on, would subject it to loss, damage and inconvenience which would be in their nature irremediable. The bill showed the company to be doing a vast business, and it was an unreasonable inference that it must submit to the sale of its wagons and horses, or that such sale would work that kind of mischief which justifies the interference of equity in the application of a preventive remedy. Nor did the mere fact that its property might be used in the conduct of interstate commerce give jurisdiction. But in addition to all this, since 1873 there has been a statute in existence in Tennessee, providing a remedy at law, which has been pronounced by this court simple and effective. *Tennessee vs. Sneed* (96 U. S., 69), under that act, where an officer charged by law with the collection of revenue due the state takes any steps for the collection of the same, a party conceiving the tax to be unjust or illegal may pay it under protest, and sue the officer to recover the money back, and if the court determines that it was wrongfully collected, then, upon its certificate to that effect, the comptroller 'shall issue his warrant for the same, which shall be paid in preference to other claims on the treasury.' And the act further provides that there shall be no other remedy in any case of the collection of revenue, and no writ for the prevention of such collection or to hinder and delay it shall in anywise issue, either injunction, supersedeas, prohibition or any other writ or process whatever."

(3.) Whether equity will take jurisdiction of all cases of cloud upon title without regard to whether there is an adequate and complete remedy at law, presents a question open to discussion; we apprehend that the weight of authority is, that where adequate remedy at law exists equity will leave the complainant to its legal remedy.

The complainants may pay their tax under protest and bring suit to recover the amount paid. The legal remedy in such case is complete and adequate.

Arkansas Building & Loan Ass'n vs. Madden, 175 U. S., 269.

Shelton vs. Platt, 139 U. S., 591.

The lien of the tax upon the real estate of the telephone companies clouds the title; equity has in many cases which do not appear to have affirmatively attached the condition

that an absence of legal remedy must appear, taken jurisdiction of cases to remove clouds from title to real estate, but we insist that such a course has been due, invariably, to the fact that a plain, adequate and complete remedy at law did not exist. This is necessarily so from the nature of equity jurisdiction which is detailed in *Thompson vs. Railroad Company* (6 Wall., 137), where it was said:

> "The absence of a plain and adequate remedy at law is the only test of equitable jurisdiction."

The character of equitable jurisdiction is set forth by *Story* in his *Equity Jurisprudence* (Redfield, Ed., Sec. 33, p. 24), as follows:

> "Perhaps the most general, if not the most precise, description of a court of equity, in the English and American sense, is that it has jurisdiction in cases of rights recognized and protected by the municipal jurisprudence, where a plain, adequate, and complete remedy cannot be had in the courts of common law. The remedy must be plain; for if it be doubtful and obscure at law, equity will assert a jurisdiction. It must be adequate, for, if at law it falls short of what the party is entitled to, that founds a jurisdiction in equity. And it must be complete; that is, it must attain the full end and justice of the case. It must reach the whole mischief, and secure the whole right of the party in a perfect manner, at the present time, and in future, otherwise equity will interfere and give such relief and aid as the exigency of the particular case may require."
>
> Watson vs. Sutherland, 5 Wall., 78.
>
> Encyclopedia of U. S. S. C. R., Vol., 5, p. 815

While, through generality of expression, many cases state that equity will intervene to remove clouds from title, in the cases in which the point has been presented the rule has been uniformly laid down that the jurisdiction of equity to remove clouds from title is founded upon the inadequacy and incompleteness of the legal remedy, and that it will not intervene when the complainant has an adequate and sufficient remedy at law.

> United States vs. Wilson, 118 U. S., 86.
>
> Wehrman vs. Conklin, 155 U. S., 321-325.
>
> Walker vs. Walker, 63 N. H., 321.
>
> Byerly vs. Humphrey, 95 N. C., 151.
>
> Whitehead vs. Shattuck, 138 U. S., 150.
>
> Killian vs. Ebbinghaus, 110 U. S., 573.
>
> Hipp vs. Babin, 19 How., 276.

Lewis vs. Cocks, 23 Wall., 466, 470.
Root vs. Railway Co., 105 U. S., 212.
Blackwood vs. Van Vleet, 11 Mich., 252.
High on Injunctions (4th Ed.), 253.
Crosby vs. Hutchinson, 126 Mich., 56.
Barron vs. Robbins, 22 Mich., 41.

In *High on Injunctions* (4th Ed.), Sec. 377, it is said:

"Since the interference for the prevention of a cloud upon title grows out of the inadequacy of the remedy at law, it follows that where special legal remedies are provided sufficiently efficacious to meet the exigencies of the case and to prevent the injury complained of, no injunction will be allowed, and the parties will be left to pursue the remedy provided at law."

"The jurisdiction of courts of equity to remove clouds from title is well tested. * * * Whether or not the jurisdiction will be exercised depends upon the fact that the estate or interest to be protected is equitable in its nature, or that the remedies at law are inadequate where the estate is legal,—a party being left to his legal remedy where his estate or interest is legal in its nature and full and complete justice can be done thereby."

Pomeroy's Equity Jurisprudence (3rd Ed.), Secs. 1398, 1399.
Pomeroy's Equitable Remedies, Secs. 359, 368.

This rule is especially applicable in federal courts by reason of the limitations placed upon them by section 723 of the Compiled Laws (Chap. 20, Sec. 16, Judiciary Act of 1789), which provides:

"Suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate and complete remedy may be had at law."

In view of this statute every case in a federal equity court, which has assumed jurisdiction of proceedings to remove clouds from title must have been predicated upon there being no plain, complete and adequate remedy at law. Of the statutory provision it was said in *Cruikshank vs. Bidwell* (176 U. S., 80-81):

"As remarked by Mr. Justice Bradley in *New York Guaranty Co. vs. Memphis Water Co.* (107 U. S., 205, 214), the sixteenth section of the Judiciary Act of 1789, now section 723 of the revised statutes, declaring 'that suits in equity shall not be sustained in either of the courts of the United States in any case where plain, ade-

quate and complete remedy may be had at law,' certainly means something; and if only declaratory of what was always the law, it must at least have been intended to emphasize the rule, and to impress it upon the attention of the courts."

In *High on Injunctions* (4th Ed.), Sec. 485, it was said:

"And the Federal Courts sitting in equity in the different states interfere with extreme caution with the collection of the revenue of the states, or of their public or municipal agencies, and will not interfere by an injunction unless in a plain case of equitable jurisdiction and of great injury for which there is no adequate remedy at law."

This rule was given effect in *Pittsburg C. C. & St. L. vs. Board of Public Works* (172 U. S., 32), where the tax was upon real estate, and the bill filed to restrain its collection, because illegal, stated that it constituted a cloud upon the title to the real estate, and prayed injunction for that reason. The court reviewed in detail the previous cases refusing relief by injunction in cases to restrain the collection of tax, and declined to maintain jurisdiction, saying:

"The collection of taxes assessed under the authority of a state is not to be restrained by writ of injunction from a court of the United States, unless it clearly appears, not only that the tax is illegal, but that the owner of the property taxed has no adequate remedy by the ordinary processes of the law, and that there are special circumstances bringing the case under some recognized head of equity jurisdiction." (172 U. S., 37.)

Douglas County vs. Stone, 110 Fed., 815.

In *Dows vs. Chicago* (11 Wall., 112), it was said:

"The equitable powers of the court can only be invoked by the presentation of a case of equitable cognizance. There can be no such case, at least in the federal courts, where there is a plain and adequate remedy at law. And except where the special circumstances which we have mentioned exist, the party of whom an illegal tax is collected has ordinarily ample remedy, either by action against the officer making the collection, or the body to whom the tax is paid."

In *State Railroad Tax Cases* (92 U. S., 614), it was said:

"We do not propose to lay down in these cases any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes, but we may

say that in addition to illegality, hardship or irregularity the case must be brought within some of the recognized foundations of equitable jurisdiction, and that mere errors or excess in valuation, or hardship or injustice of the law, *or any grievance which can be remedied by a suit at law, either before or after payment of taxes will not justify a court of equity to interpose by injunction to stay collection of a tax.*"

In the *Encyclopaedia of Pleading and Practice* (Vol. 17, p. 282), the following rule, supported by many cases, is laid down:

"In accordance with the general principle of equity jurisprudence, where there is a complete and adequate remedy at law, equity will not assume jurisdiction of a bill to quiet title, or remove a cloud."

This rule is stated in *Cyc.* (Vol. 32, p. 1309), as follows:

"The general rule, when the title or interest of plaintiff is legal in its nature, is that equity will not entertain jurisdiction where there is an adequate remedy at law."

In cases, where courts have taken jurisdiction of cases to restrain the collection of taxes where the title to real estate was clouded, it has satisfied itself and shown in its opinion, that there was no adequate remedy at law.

Ogden City vs. Armstrong, 168 U. S., 237.
Raymond vs. Chicago Traction Co., 207 U. S., 39-40.

In other cases the jurisdiction was maintained because the right to pay the tax and sue for its recovery apparently did not exist until after attempted enforcement of the tax by distress and sale; an example is *Union Pacific vs. Cheyenne* (113 U. S., 525), where it was said:

"It is well settled that there ought to be some equitable ground for relief besides the mere illegality of the tax; for it must be presumed that the law furnishes a remedy for illegal taxation."

By analogy the jurisdiction of equity courts in cases of fraud is interesting: fraud, generally, has always been regarded as presenting a case for equitable cognizance, as have clouds upon title, and yet, in such cases, the federal equity courts will not grant relief if there be a remedy at law.

Ambler vs. Choteau, 107 U. S., 586.
Buzard vs. Houston, 119 U. S., 347.
Kramer vs. Cohn, 119 U. S., 355.

Tyler vs. Savage, 143 U. S., 79.
Grand Chute vs. Winegar, 15 Wall., 374.

In Michigan, when the collecting officer gives notice of the tax, and demands payment as was done in this case, payment under protest may be made, and basis for suit to recover is furnished.

In this case, while the lien of the tax extends to the real estate there is no danger that it will ever be affected thereby. The tax was small in comparison with complainants' paying ability and personal property. By statute the proceeding for enforcement of the taxes of this character, where distress and sale is necessary, is similar to the proceeding on execution sale (C. L. 1897, Sec. 4028); requiring a resort to the personal property before the real property can be sold. (C. L. 1897, Sec. 10330; 39 Mich., 82.)

(4.) The Michigan rule that where a person taxed makes involuntary payment of the tax or payment under threat of levy, he may institute proceedings at law to recover the tax paid, is undoubted.

First National Bank vs. Watkins, 21 Mich., 488.
Atwell vs. Zeluff, 26 Mich., 118.
Hagenbuch vs. Howard, 34 Mich., 1.
Mears vs. Howarth, 34 Mich., 19.
Babcock vs. Township of Beaver Creek, 64 Mich., 601.
Cox vs. Welcher, 68 Mich., 263.
Whitney vs. Port Huron, 88 Mich., 269.
Thompson vs. City of Detroit, 114 Mich., 502.
Woodmere Cemetery Ass'n vs. Springwells, 130 Mich., 466.
Pere Marquette vs. Ludington, 133 Mich., 397.
Laing vs. Township of Forrest, 139 Mich., 161.

In *First National Bank vs. Watkins* (21 Mich., 488), the proceedings were against an officer to whom specific taxes were paid under threat of levy. It appeared that part of the tax had been paid into the state treasury and that the statute was unconstitutional. The court in permitting recovery, said: said:

"The grounds of defense set up are that the payment was voluntary, and that a portion of the money was paid over into the state treasury.

The case is freed from some of the difficulties which are occasionally met with in similar controversies, in as much as the process was not one which related to any of the ordinary duties of the plaintiff in error, as sheriff

of the county. It was issued under a special statute applicable to but one subject, and showed on its face the source and extent of the authority asserted, by referring expressly to the legislative act.

This was held to be unconstitutional in *Smith vs. First National Bank of Tecumseh* (17 Mich., 479). The warrant in this case was the same as in that, and the sheriff of Lenawee county, acting under such an instrument, was held responsible in trespass for making a levy to collect it.

The writ, being bad upon its face, made any one seeking to enforce it a wrong-doer, and any money obtained under it being unlawfully obtained, he had no right to pay it into the treasury, and such payment would not exonerate him. No relationship of principal and agent could exist under a law which was null, and the case cannot be likened to that of an innocent agent, who without personal fault receives money by mistake and transmits it to his principal. The immunity belonging to such transactions does not extend to wrong-doers. * * *

The payment in this case cannot be regarded as voluntary in any proper sense. It was made under the threat of the immediate and effectual enforcement of the illegal warrant. The authorities are quite uniform that where such a demand is made under color of office and the payment is made under protest, the money may be recovered back, under all circumstances, from the person extorting it. The only question that appears to have been mooted is whether any protest is necessary, where the entire exaction is illegal on its face. The doctrine is beyond controversy that when the entire claim is unlawful, and the money is taken under color of public office, an action lies for its recovery. * * * The principal object of the notice or protest seems to be to warn the officer not to pay over the money. As the protest was made in the present case, there is no occasion to consider its legal necessity, in order to hold an officer who has paid over to another.

There is nothing in the authorities to warrant the argument that there must be any technical duress, or that the party imposed upon must resort either to violent or legal remedies to prevent the execution of the process, or to recover property he allows to be seized under it. No payment can be regarded as voluntary, and no one can be regarded as unduly negligent in making it, when the party sees fit to comply with the illegal demand,

while protesting against its legality. He has a right to assume that the officer will do what he threatens to do, and no principle of public policy will compel him to use means of protection, when he prefers peaceful submission, and a resort to a civil action."

In *Cox vs. Welcher* (68 Mich., 263), it was said:

"Where payments are involuntary, and made under legal duress, there has never been any rule requiring a specific protest. The attempt to compel payment where there is no legal burden is regarded as a legal injury, and payment made to avoid the seizure and sale of property to pay the wrongful claim can be recovered back as an extorted sum for which there was no consideration. The principle is so familiar, under our own decisions, as to need no citation of cases."

In *Thompson vs. City of Detroit* (114 Mich., 502), it was said, (p. 505):

"The claim of counsel for defendant is that the coercion or duress which will render a payment of taxes involuntary must, in general, consist of some actual or threatened exercise of power possessed or believed to be possessed by the party exacting or receiving the payment over the person or property of another, from which the latter has no other means of immediate relief, except by making payment, and that no such fact exists in the present case. * * *

It also appears in the present case that the assessment is void. The city, therefore, has in its possession the moneys paid by plaintiffs, which should be repaid, unless by the strict rules of law no recovery can be permitted.

Can one relieve his land from the lien of a tax or assessment against it by making payment before any attempt to make sale? It appears that on August 9, 1892, a notice was sent by the receiver of taxes to the plaintiffs, stating that the assessment had been made upon the property, and, if not paid on or before September 9th, 5 per cent would be added, and thereafter such tax would bear 10 per cent per annum until paid. The assessment was paid September 9th, while the tax was not paid until threat of levy upon personal property, yet we think that, it having been made for the purpose of relieving the real estate of the lien which had attached by virtue of the provisions of the charter, it was equiv-

alent to a payment under compulsion. *Prima facie*, it was a valid lien upon the land. * * *

In *Atwell vs. Zeluff* (26 Mich., 118), the action was brought against Zeluff, who was supervisor, the cause of action being the issue by Zeluff of a tax warrant for the collection of ditch taxes against the plaintiff. There was nothing in the record showing that any levy was threatened, but a demand of payment was made. It was said:

'In regard to the payment made without levy on his goods, it was objected that the payment, being without protest, was voluntary. This question was somewhat discussed, but not actually decided, in First National Bank vs. Watkins, 21 Mich., 483. Where an officer demands a sum of money under a warrant directing him to enforce it, the party of whom he demands it may fairly assume that, if he seeks to act under the process at all, he will make it effectual. The demand itself is equivalent to a service of the writ on the person. Any payment is to be regarded as involuntary which is made under a claim involving the use of force as an alternative, as the party of whom it is demanded cannot be compelled or expected to await actual force, and cannot be held to expect that an officer will desist after once making demand.'

In *Whitney vs. City of Port Huron* (88 Mich., 270), it appeared that a special assessment had been laid upon plaintiff's real property, and the city treasurer had advertised it for sale. It was said:

'She had the right to presume that he would proceed with the sale. The fact that the sale would have conveyed no title to the purchaser, on account of the illegality of the tax, or that she could have removed the cloud upon her title caused by such sale by legal proceedings, had no bearing upon her right to pay the tax under protest, and thereby stop the sale. Nor was it any the less an involuntary payment under the law. * * * If the citizen's property is threatened with seizure under a tax warrant, or his real estate is advertised for sale to collect delinquent taxes, he is, equally in both cases, entitled to free his property by a payment of the tax under protest, and such payment will not be considered voluntary.'

In the present case the land had not been advertised for sale, but under the charter the city had the right to make the sale for the collection of the assessment, and

presumably would have done so, had the tax not been paid."

That payment would remove the cloud upon the title.

Henry vs. Gregory, 29 Mich., 69.

The fact that in Michigan, the right to sue to recover the tax results from the common law, and not from statute, as in *Shelton vs. Platt*, and that the money is collected by a state officer, and may be by him paid into the state treasury, does not impair the remedy (*Atchison, Topeka & Santa Fe v. O'Connor*, 223 U. S., 287) or make it any less plain, complete or adequate, as is indicated by *Arkansas Building and Loan Association vs. Madden* (175 U. S., 269).

In that case complainant sought to restrain enforcement of a franchise tax of Texas as unconstitutional. There was no statute like that existing in *Shelton vs. Platt*, but the common law of Texas permitted suit to recover a tax involuntarily paid and it was held that as the law in that manner gave ample remedy, the equitable proceeding would not lie, the court saying, (p. 272):

"The rule is that the collection of taxes under state authority will not be enjoined by a court of the United States on the sole ground that the tax is illegal, but it must appear that the party taxed has no adequate remedy by the ordinary processes of the law, and that there are special circumstances bringing the case within some recognized head of equity jurisdiction.* * * And on principle, the interference of the courts of the United States by injunction with the collection of state taxes, or with state administration of matters of internal police, can only be justified in a plain case not otherwise remediable.

The grievance complained of in this case is that the Arkansas corporation entered on the transaction of business in Texas at a time when the annual franchise or license tax was ten dollars, and that it is now required to pay two hundred and five dollars, by a subsequent law, which, it alleges, is unconstitutional.

The penalty denounced on failure to pay is the forfeiture of the right to do business in the state, and complainant averred that if that forfeiture were declared it would be subjected to irreparable injury and a multiplicity of suits.

It is on these grounds of equity interposition that the aid of the Circuit Court was sought to restrain the dis-

charge by a state officer of duties imposed on him by the law of the state and to adjusticate as to the validity of that law.

But the bill of complaint did not set forth any facts tending to show that complainant could not escape the forfeiture by payment of the two hundred and five dollars under protest, and recover back the money so paid if the law should be held void.

We assume that the payment would, under the circumstances detailed, be compulsory and not voluntary, and no reason is perceived why the rule permitting recovery back would not apply.

That rule as applicable here is that an action will lie for money paid, under compulsion, or an illegal demand, the person making it being notified that his right to do so is contested. * * * The principle is thus stated by Gaines, J., in *Taylor vs. Hall*, (71 Texas, 213): 'The law is established that when a person, by the compulsion of the color of legal process, or of seizure of his person or goods, pays money unlawfully demanded, he may recover it back.'

The fact that the defendant is a state official is not in itself a defense, and our attention has been called to no statute of Texas which substitutes any other for the common law rule.

Inasmuch as the bill contains nothing to indicate inability on the one hand to pay the franchise tax in question, or on the other, to respond in judgment if it were found to have been illegally exacted, and sets up no special circumstances justifying the exercise of equity jurisdiction other than consequences which complainant can easily avert, without loss or injury, we are of opinion that it cannot be sustained.

It is quite possible that in cases of this sort, the validity of a law may be more conveniently tested, by the party denying it, by a bill in equity than by an action at law; but considerations of that character, while they may explain, do not justify resort to that mode of proceeding."

This right to make payment and sue to recover is recognized both by the common law of the United States (Elliot vs. Swartwout, 10 Peters, 149), and of Michigan. It was, therefore, a remedy at law, which existed when the judiciary act was passed and prohibits the Federal Court from jurisdiction. The same reasons which made this remedy complete

and adequate in *Arkansas Building and Loan Ass'n vs. Madden* (175 U. S., 269), make it equally so here.

There is no fact or circumstance in the cases which will permit equity to maintain jurisdiction. There can be no honest apprehension of irreparable injury. By payment of the tax, complainants can avert levy or sale of, or remove the cloud from their property, and proceed at law to recover the amount paid. There is no possibility of a multiplicity of suits, as the tax is to be paid into one fund, and but one suit will be necessary to, or can, be brought for its recovery.

The court below extended the right to complainants to amend their bills to show the irresponsibility of the collecting officers in a suit against them to recover the tax (*Record p.* 30), but they did not avail themselves of that right; the court will not assume therefore that the state officers were not able to answer for the amount of the tax against these appellants.

In *Fargo vs. Hart* (193 U. S., 502), jurisdiction was maintained, upon the ground that payment was to be made to the collecting officers of many municipalities, and that equity should intervene to prevent multiplicity of suits, and that a case of over-valuation was presented.

The lower court in its opinion upon the demurrer, referred to the *Michigan Railway Tax Cases*, (201 U. S., 245,) and the fact that the court took jurisdiction there, as precedent for the proposition that equity will maintain jurisdiction of a bill of this character to quiet title.

A careful examination of what was involved in that case will indicate that it is not parallel with this. There, there was no complete and adequate remedy at law; here, there is such remedy. There the complainants' case involved questions, and they claimed relief based upon irregularities, namely, the under-valuation of the general properties of the state, which could not be proved in a suit to recover the taxes; here there are no claims or defences to the taxes which could not as readily be made a suit at law to recover the taxes as in a direct proceeding to set them aside. The distinguishing feature of the two cases was recognized in *Western Union vs. Gottlieb* (190 U. S., 426), where it was said:

"The Circuit Court said:

'The property was subject to taxation by the authority and for the purpose alleged. True, the result reached was erroneous, because of the wilful disregard

in the proceeding of the law requiring uniformity in the valuation of property for taxation within the jurisdiction of the defendant. Still, the proceeding being *quasi* judicial, and the subject-matter within the jurisdiction of the officers who conducted it, the result reached is so far conclusive that the legality of it cannot be questioned in an action at law to recover back the one-half of the tax as illegal.'

So this court said in *Stanley vs. Supervisors, supra*:

'It is only where the assessment is wholly void, or void with respect to separable portions of the property, the amount collected on which is ascertainable, or where the assessment has been set aside as invalid, that an action at law will lie for the taxes paid, or for a portion thereof. Over-valuation of property is not a ground of action at law for the excess of taxes paid beyond what should have been levied upon a just valuation. The courts cannot, in such cases, take upon themselves the functions of a revising or equalizing board. * * *

And we think over-valuation of property cannot be a ground of defense at law. In other words, the action of the tax officers, being in the nature of a judgment, must be yielded to until set aside. This can only be done in a direct proceeding.''

Respectfully submitted,

Grant Fellows,

Roger I. Wykes.

APPENDIX I.

A study of the Fourteenth Amendment: what it permits and requires in matters of taxation, the rules which govern its application, and the classifications which it permits.

APPENDIX I.

A study of the Fourteenth Amendment: what it permits and requires in matters of taxation, the rules which govern its application, and the classifications which it permits.

In general. The cases at bar are planted upon the Fourteenth Amendment which will justify the following somewhat elaborate examination of the cases arising under that provision. In a myriad of cases its requirements in, and its controlling effect upon, legislation have been the subject of judicial inquiry, and in this portion of the brief will be found a discussion of the cases which, more or less directly, bear upon the principles which underlie and must govern in the decision of the issue here presented.

I.

Meaning of Guaranty. The specific clause of the Fourteenth Amendment which is claimed to be violated is "no state shall * * * deny to any person within its jurisdiction the equal protection of the laws."

The meaning of this guaranty has in many cases been generally defined. A reference to a few of those definitions will be sufficient for our purposes.

In *Connolly vs. Union Sewer Pipe Co.* (184 U. S., 559), it was said:

> "The guarantee of the equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances.' *Missouri vs. Lewis*, 101 U. S., 22, 31. We have also said: 'The Fourteenth Amendment, in declaring that no state 'shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal

protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and conditions and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences.' "

In *Southern Railway vs. Greene* (216 U. S., 412), it was said:

"The equal protection of the laws means subjection to equal laws, applying alike to all in the same situation. If the plaintiff is a person within the jurisdiction of the state of Alabama within the meaning of the Fourteenth Amendment, it is entitled to stand before the law upon equal terms, to enjoy the same rights as belong to, and to bear the same burdens as are imposed upon, other persons in a like situation."

In *Pembina Mining Co. vs. Pennsylvania* (125 U. S., 188), it was said:

"The inhibition of the amendment that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation."

In *Bell's Gap vs. Pennsylvania* (134 U. S., 237), it was said:

"It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and

general usage, are within the discretion of the state legislature, or the people of the state in framing their constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise. We think that we are safe in saying, that the Fourteenth Amendment was not intended to compel the state to adopt an iron rule of equal taxation."

II.

Classification is permitted. The amendment not only recognizes the propriety of classification, but also regards it as essential to equality.

In *Barbier vs. Connolly* (113 U. S., 31), it was said:

"The Fourteenth Amendment, in declaring that no state 'Shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences. But neither the amendment—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the state sometimes termed its police power,

to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits—for supplying water, preventing fires, lighting districts, cleaning streets , opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."

In *Missouri Pacific vs. Mackey* (127 U. S., 209), the Court said:

"The greater part of all legislation is special, either in the objects sought to be attained by it, or in the extent of its application. Laws for the improvement of municipalities, the opening and widening of particular streets, the introduction of water and gas, and other arrangements for the safety and convenience of their inhabitants, and laws for the irrigation and drainage of particular lands, for the construction of levees and the bridging of navigable rivers, are instances of this kind. Such legislation does not infringe upon the clause of the Fourteenth Amendment requiring equal protection of the laws, because it is special in its character; if in conflict at all with that clause, it must be on other grounds. And when legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws, if all persons brought un-

der its influence are treated alike under the same conditions."

In *Bell's Gap vs. Pennsylvania* (134 U. S., 237,) it was said:

"The provision in the Fourteenth Amendment, that no state shall deny to any person within its jurisdiction, the equal protection of the laws, was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. * * * If that were its proper construction it would not only supersede all those constitutional provisions and laws of some of the states, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material, but it would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and vice; and which every state, in one form or another, deems it expedient to adopt."

Merchant's Bank vs. Pennsylvania, 167 U. S., 465.
Brown-Forman Co. vs. Kentucky, 217 U. S., 572.

In *Home Insurance Co. vs. New York* (134 U. S., 606), it was said:

"But the amendment does not prevent the classification of property for taxation—subjecting one kind of property to one rate of taxation, and another kind of property to a different rate—distinguishing between franchises, licenses and privileges, and visible and tangible property, and between real and personal property. Nor does the amendment prohibit special legislation. Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be obtained by it."

In *Pacific Express Co. vs. Seibert* (142 U. S., 351), it was said:

"This court has repeatedly laid down the doctrine that diversity of taxation, both with respect to the amount imposed and the various species of property selected either for bearing its burdens or for being exempt from them, is not inconsistent with a perfect uniformity and equality of taxation in the proper sense of those terms; and that a system which imposes the same tax upon every species of property, irrespective of its nature or condition or class, will be destructive of the principle of uniformity

and equality in taxation and of a just adaptation of property to its burdens."

Western Union Telegraph Co. vs. Indiana, 165 U. S., 309.

In *Giozza vs. Tiernan* (148 U. S., 662), the rule is stated as follows:

"Nor, in respect of taxation was the amendment intended to compel the state to adopt an iron rule of equality; to prevent the classification of property for taxation at different rates; or to prohibit legislation in that regard, special either in the extent to which it operates or the objects sought to be obtained by it. It is enough that there is no discrimination in favor of one as against another of the same class."

In *Magoun vs. Illinois Trust & Savings Bank* (170 U. S., 293), it was said:

"The clause of the Fourteenth Amendment especially invoked is that which prohibits a state denying to any citizen the equal protection of the laws. What satisfies this equality has not been and probably never can be precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all the constituents of a class so that the law shall operate equally and uniformly upon all persons in similar circumstances.' *Kentucky Railroad Tax cases*, 115 U. S., 321, 337. It does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. *Hayes vs. Missouri*, 120 U. S., 68. Similar citations could be multiplied. But what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principle they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustration it may be safely said that the rule prescribes no rigid equality and permits to the discretion and wisdom of the state a wide latitude as far as interference by this court is concerned. Nor with the impolicy of a law has it concern. Mr. Justice Field said in *Mobile County vs. Kimball*, 102 U. S., 691, that this court is not a harbor in

which can be found a refuge from an ill-advised, unequal and oppressive state legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of state laws is not necessarily an objection to their constitutional validity.'

The rule, therefore, is not a substitute for municipal law; it only prescribes that that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations. In some circumstances it may not tax A more than B, but if A be of a different trade or profession than B, it may. And in matters not of taxation, if A be a different kind of corporation than B, it may subject A to a different rule or responsibility to servants than B, *Missouri Pacific Railway vs. Mackey*, 127 U. S., 205, to a different measure of damages than B, *Minneapolis & St. Louis Railway vs. Beckwith*, 129 U. S., 26, and it permits special legislation in all of its varieties. *Missouri Pacific Railway vs. Mackey*, 127 U. S., 205; *Minneapolis & St. Louis Railway vs. Herrick*, 127 U. S., 210; *Duncan vs. Missouri*, 153 U. S., 377.

In other words, the state may distinguish, select and classify objects of legislation and necessarily this power must have a wide range of discretion. It is not without limitation, of course. 'Clear and hostile discriminations against particular persons and classes, especially such as are of unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition."

In *American Sugar Refining Co. vs. Louisiana* (179 U. S., 94), the court said:

"The power of taxation under this provision was fully considered in *Bell's Gap Railroad Co. vs. Pennsylvania*, 134 U. S., 232, in which it was said not to have been intended to prevent a state from changing its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property altogether; may impose different specific taxes upon different trades or professions; may vary the rates of excise upon various products; may tax real and personal estate in a different manner; may tax visible property only and not securities; may allow or not allow deductions for indebtedness. 'All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature

or the people of the state in framing their constitution.'"

In *Florida Central vs. Reynolds* (183 U. S., 476), the court say:

"It is well known that the states vary materially in their systems of taxation. Each determines for itself what in its judgment is best for the interests of its people. In some there are general exemptions of particular classes of property, such as property used for religious, educational and benevolent purposes. Some, in order to encourage certain industries, such as manufacturing, make either general or special exemptions. Some think it for their best interest to derive their revenues from personal property, corporations and licenses, and exempt real estate. In some, contracts for exemption are authorized by the state constitution; in others, they are forbidden. Now, considering the great diversity in these systems it would obviously have worked a marked revolution if the first section of the Fourteenth Amendment had been construed as compelling a cast iron rule of equal taxation. It was not intended, as held in the case quoted from, and also in *Barbier vs. Connolly*, 113 U. S., 27, to restrain the legislature from any proper and legitimate classification both as respects property for taxation and the methods of assessment and taxation. Doubtless it would prohibit a state from selecting some obnoxious person and casting upon his property the sole burden of taxation, or a burden differing from that cast upon others whose property was similarly situated, but it does not prevent a state from exercising its judgment as to the property to be taxed and the modes of taxation, providing all property similarly situated is treated in the same way."

In *Michigan Central vs. Powers* (201 U. S., 293), the rule is stated as follows:

"There can at this time be no question, after the frequent and uniform expressions of the Federal Supreme Court, that it was not designed by the Fourteenth Amendment to the Constitution to prevent a state from changing its system of taxation in all proper and reasonable ways, nor to compel the states to adopt an iron-clad rule of equality, to prevent the classification of property for purposes of taxation, or the imposition of different rates upon different classes. It is enough that there is no discrimination in favor of one as against another of the same class, and the method for the assess-

ment and collection of the tax is not inconsistent with natural justice" (293).

"It may also be said that a legislature is not bound to impose the same rate of tax upon one class of property that it does upon another. As it may exempt all of one class so it may impose a different rate of taxation. It is sufficient if all of the same class are subjected to the same rate and the tax is administered impartially upon them" (302).

From the cases above referred to, it is apparent that the right of classification for purposes of taxation is settled. The difficulty is not as to the general principle, but whether a particular case falls within it. Upon this question in *Atchison, Topeka & Santa Fe, vs. Matthews* (174 U. S., 103), it was said:

"Many cases have been before this court, involving the power of state legislatures to impose special duties or liabilities upon individuals and corporations, or classes of them, and while the principles of separation between those cases which have been adjusted to be within the power of the legislature and those beyond its power, are not difficult of comprehension or statement, yet their application often becomes very troublesome, especially when a case is near to the dividing line. It is easy to distinguish between the full light of day and the darkness of midnight, but often very difficult to determine whether a given moment in the twilight hour is before or after that in which the light predominates over the darkness. The equal protection of the law which is guaranteed by the Fourteenth Amendment does not forbid classification."

Specific instances of classification and the extent to which the legislature may go, in providing diverse rules for different situations, have been so often before the courts that every conceivable situation has been passed upon, and it would be difficult to find a case—and the one at bar is no exception—which is not within the principles laid down, or governed by some adjudication. Upon this point the court in *Clark vs. Kansas City* (176 U. S., 119), made the following comment:

"The answer to that charge depends upon the power of the state to classify objects of legislation; necessarily a broad power, and one which this court has so many times decided exists, and so many times has defined and illustrated the limits upon it of the provision of the constitution of the United States invoked by plaintiff in error, that farther definition would seem impossible, and any

new instance of its application not without exact or analogous example in some decided case."

III.

The basic principles upon which classification must rest, or, in other words, what the Amendment requires. The general rule which first found expression in *Gulf, Colorado and Santa Fe vs. Ellis* (165 U. S., 155), has been generally accepted as stating the correct rule to which all classification must conform, and when any particular classification conforms to that rule, it is proper. The rule there stated was that classification:

> "Must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis."

The same general rule has been stated in many other cases in the form in which it appears in *Magoun vs. Illinois Trust & Savings Bank* (170 U. S., 293), where it was said that the amendment:

> "Merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privileges conferred and the liabilities imposed."

In *Nicol vs. Ames* (173 U. S., 521), the same rule is given expression in the following language:

> "The question always is, when a classification is made, whether there is any reasonable ground for it, or whether it is only and simply arbitrary, based upon no real distinction and entirely unnatural."

In *Connolly vs. Union Sewer Pipe Co.*, (184 U. S., 560), the court re-states the rule of the Ellis case, in the following language:

> "The difficulty is not met by saying that, generally speaking, the state when enacting laws may, in its discretion, make a classification of persons, firms, corporations and associations, in order to subserve public objects. For this court has held that classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. * * * But ar-

bitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. * * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. * * * It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification— and is not a mere arbitrary selection."

From these cases it is apparent that no classification can be made for the purpose of conferring privileges or imposing burdens, except there be some difference to justify different treatment of the members of the different classes. As we shall see, the legislature is given a broad latitude of discretion; it is for it to determine whether diverse rules should be applied and what they should be.

Absolute equality, or classification based upon scientific or mathematical division of the classes, is neither requisite nor necessary.

In *Merchants Bank vs. Pennsylvania* (167 U. S., 464), it was said:

"The argument is that inequality of burden establishes the unconstitutionality of the law under which the tax is levied. If the validity of our tax laws depends upon their ability to stand successfully this test, there are none of them that can stand. Indeed, this whole argument of a right under the Federal Constitution to challenge a tax law on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in *Bell's Gap Railroad vs. Pennsylvania.*"

In *Orient Insurance Co. vs. Daggs* (172 U. S., 562), it was said:

"We said in that case that 'the state may distinguish, select and classify objects of legislation, and necessarily the power must have a wide range of discretion.' And this because of the function of legislation and the purposes to which it is addressed. Classification for such

purposes is not invalid because not depending on scientific or marked differences in things or persons or in their relations. It suffices if it is practical, and is not reviewable, unless palpably arbitrary. The classification of the Missouri statute is certainly not arbitrary. We see many differences between fire insurance and other insurance, both to the insurer and the insured— differences in the elements insured against and the possible relation of the parties to them, producing consequences which may justify if not demand different legislative treatment."

Western Union Telegraph Co. vs. Milling Co., 218 U. S. 421.

In *Magoun vs. Illinois Trust and Savings Bank* (170 U. S., 296), the rule was stated as follows:

"There is, therefore, no precise application of the rule of reasonableness of classification, and the rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes there cannot be an exact exclusion or inclusion of persons and things. Bearing these considerations in mind we can solve the questions in controversy."

In *District of Columbia vs. Brooke* (214 U. S., 150), it was said:

"Passing on that Amendment, we have repeatedly decided—so often that a citation of the cases is unnecessary—that it does not take from the states the power of classification. And also that such classification need not be either logically appropriate or scientifically accurate. The problems which are met in the government of human beings are different from those involved in the examination of the objects of the physical world and assigning them to their proper associates. A wide range of discretion, therefore, is necessary in legislation to make it practical, and we have often said that the courts cannot be made a refuge from ill-advised, unjust or oppressive laws. *Billings vs. Illinois*, 188 U. S., 97; *Heath & Milligan Manufacturing Co., et al. vs. Worst*, 207 U. S., 338. In the light of these principles the contentions of defendant in error must be judged. The act in controversy makes a distinction in its provision between resident and non-resident lot owners, but this is a proper basis for classification. Regarded abstractly as human beings, regarded abstractly as lot owners, no legal difference may be observed between residents and non-

residents, but regarded in their relation to their respective lots under regulating laws, the limitations upon jurisdiction, and the power to reach one and not the other, important differences immediately appear. We said in *St. John vs. New York*, 201 U. S., at pages 633, 637, not only the purpose of a law must be considered, but the means of its administration—the ways it may be defeated. Legislation, to be practical and efficient, must regard this special purpose as well as the ultimate purpose."

In *Ozan Lumber Company vs. Union County Bank* (207 U. S., 256), it was determined that exceptional and rare cases should not operate to destroy the classification which the legislature had made, and to render its action, evidenced by its legislation, invalid; the court there saying:

"The manufacturer of a patented article, who also sells it in the usual course of business in his store or factory, would probably come within the exception of Sec. 4. He may be none the less a dealer, selling in the usual course of his business, because he is also a manufacturer of the article dealt in. Exceptional and rare cases, not arising out of the sale of patented things in the ordinary way, may be imagined where this general classification separating the merchants and dealers from the rest of the people might be regarded as not sufficiently comprehensive, because in such unforeseen, unusual and exceptional cases the people affected by the statute ought, in strictness, to have been included in the exception. See opinion of Circuit Court herein, 127 Fed. Rep., *supra*. But we do not think the statute should be condemned on that account. It is because such imaginary and unforeseen cases are so rare and exceptional as to have been overlooked that the general classification ought not to be rendered invalid. In such case there is really no substantial denial of the equal protection of the laws within the meaning of the amendment.

It is almost impossible, in some matters, to foresee and provide for every imaginable and exceptional case, and a legislature ought not to be required to do so, at the risk of having its legislation declared void, although appropriate and proper upon the general subject upon which such legislation is to act, so long as there is no substantial and fair ground to say that the statute makes an unreasonable and unfounded general classification, and thereby denies to any person the equal protection of the

laws. In a classification for governmental purposes there cannot be an *exact* exclusion or inclusion of persons and things. See *Gulf, etc., Co. vs. Ellis*, 165 U. S., 150, and cases cited; *Missouri, etc., Co. vs. May*, 194 U. S., 267. We can see reasons for excepting merchants and dealers who sell patented things, in the usual course of business, from the provisions of the statute, and we think the failure to exempt some few others, as above suggested, ought not to render the whole statute void as resulting in an unjust and unreasonable discrimination."

And in *Mercantile Bank vs. New York* (121 U. S., 161-162), it was recognized that the smallness in amount of the exempted property when compared with that taxed, was a feature for consideration.

In *Interstate Railway Co. vs. Massachusetts* (207 U. S., 86-87), it was said:

"Notwithstanding the foregoing considerations I hesitatingly agree with the state court that the requirement may be justified under what commonly is called the police power. The obverse way of stating this power in the sense in which I am using the phrase would be that constitutional rights like others are matters of degree and that the great constitutional provisions for the protection of property are not to be pushed to a logical extreme, but must be taken to permit the infliction of some fractional and relatively small losses without compensation, for some at least of the purposes of wholesome legislation."

In *Martin vs. District of Columbia* (205 U. S. 139), it was said:

"That case dealt with the same objection, to be sure, in point of form, but a very different one in point of substance. The assessment in question there was an assessment for grading and paving, and it was pointed out that a legislature would be warranted in assuming that grading and paving streets in a good-sized city commonly would benefit adjoining land more than it would cost. The chance of the cost being greater than the benefit is slight, and the excess, if any, would be small. These and other considerations were thought to outweigh a merely logical or mathematical possibility on the other side, and to warrant sustaining an old and familiar method of taxation. It was emphasized that there should not be extracted from the very general language of the

Fourteenth Amendment, a system of delusive exactness and merely logical form."

In *Lindsley vs. Natural Carbonic Gas Co.* (220 U. S. 78), it was said:

"The rules by which this contention must be tested, as is shown by repeated decisions of this court, are these: 1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

In *Louisville & Nashville vs. Melton* (218 U. S. 54), it was said:

"In other words, reduced to its ultimate analysis the contention comes to this, that by the operation of the equal protection clause of the Fourteenth Amendment the States are prohibited from exerting their legitimate police powers upon grounds of the generic distinction obtaining between persons and things, however apparent such distinction may be, but, on the contrary, must legislate upon the basis of a minute consideration of the distinctions which may arise from accidental circumstances as to the persons and things coming within the general class provided for. When the proposition is thus accurately fixed it necessarily results that in effect it denies the existence of the power to classify, and hence must rest upon the assumption that the equal protection clause of the Fourteenth Amendment has a scope and effect upon the lawful authority of the States contrary to the doctrine maintained by this court without deviation. This follows since the necessary consequence of the argument is to virtually challenge the legislative power to classify and the numerous decisions upholding

that authority. To this destructive end it is apparent the argument must come, since it assumes that however completely a classification may be justified by general considerations, such classification may not be made if inequalities be detected as to some persons embraced within the general class by a critical analysis of the relation of the persons or things otherwise embraced within the general class. A brief reference to some of the cases dealing with the power of a state to classify will make the error of the contention apparent."

In *Minnesota Iron Company vs. Kline* (199 U. S., 593, 598), where the objection to a fellow servant law applicable to railroads was that its proviso excepted damages sustained by employees engaged in the construction of new and uncompleted railroads, it was said:

> "The whole case is put on the proviso, and the argument with regard to that is merely one of the many attempts to impart an overmathematical nicety to the prohibitions of the Fourteenth Amendment."

That absolute equality is not only not required, but is, in matters of taxation, impossible, has been repeatedly recognized. The court in commenting upon this circumstance in in *Travelers Insurance Co. vs. Connecticut* (185 U. S., 372), said:

> "Perfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized. It may be admitted that the system which most nearly attains this is the best. But the most complete system which can be devised must, when we consider the immense variety of subjects which it necessarily embraces, be imperfect. And when we come to its application to the property of all the citizens, and of those who are not citizens, in all the localities of a large state like Illinois, the application being made by men whose judgments and opinions must vary as they are affected by all the circumstances brought to bear upon each individual, the result must inevitably partake largely of the imperfection of human nature and of the evidence on which human judgment is founded."

IV.

Principles established as governing in application of amendment. The principles to be applied in determining whether a particular classification is proper, have become settled, and their application to our situation simplifies, and aids in, its determination.

(1) *A special rule for taxation.* A special rule applies in classification for taxation. The necessity for the exercise of the power and the advantage in its remaining free and unrestrained, have led to the rule that the utmost discretion is to be accorded to the legislature in classification for that purpose.

Different considerations move the courts in determining the validity of statutes making classifications for taxation purposes and those making classifications for other purposes; the decisions which are conclusive upon the question of classification for police regulations are not necessarily applicable in taxation; in matters of taxation, the application given to the amendment by the courts is consistent with a very wide discretion in the legislatures of the states; taxation systems must clearly violate the amendment to meet the disapproval of the courts; where there is any difference in the classes to which different rules and incidents are applied, which bears any relation to the purpose of the classification made, the courts will not inquire into the necessity or propriety of the classification, but will leave those subjects to the legislative discretion. These rules have always been recognized, and in recent cases have found affirmative and emphatic support. The distinction between taxation and other statutes, and the degree of finality to be accorded to the legislative judgment in the former instance, are expressly recognized in *Connolly vs. Union Sewer Pipe Co.* (184 U. S. 562, 563), where the anti-trust law of Illinois was declared unconstitutional as denying equal protection of the law by reason of discrimination in exempting from its provisions agriculturalist and live stock dealers or raisers. There, those contending for the constitutionality of the law cited similar cases (*American Sugar Refining Co. vs. Louisiana* 179 U. S., 88; *Magoun vs. Illinois Trust & Savings Bank*, 170 U. S., 283), of classification for purposes of taxation and insisted that the same rules should be applied to the case before the court.

The court distinguished the cases on the ground that the previous cases related to taxation; and of *American Sugar Refining Co. vs. Louisiana,* said:

> "We said in that case, 'The power of taxation under this provision was fully considered in *Bell's Gap Railroad Company vs. Pennsylvania,* 134 U. S., 232, in which it was said not to have been intended to prevent a state from changing its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property altogether; may impose different specific taxes upon different trades or professions; may vary the rates of excise upon various products; may tax real and personal estate in a different manner; may tax visible property only and not securities; may allow or not allow deductions for indebtedness. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature or the people of the state in framing their constitution.' * * * The decision now rendered is not at all in conflict with the views expressed in the two cases just cited. It is sufficient to say that those cases had reference to the taxing power of the state, and involved considerations that could not, in the nature of things, apply to a state enactment like the one involved in the present case. The power to tax persons and property is an incident of sovereignty, and the extent to which it may be exerted has been indicated in numerous cases. Taxing laws, it has been well said, furnish the measure of every man's duty in support of the public burdens and the means of enforcing it. A tax may be imposed only upon certain callings and trades, for when the state exerts its power to tax, it is not bound to tax all pursuits or all property that may be legitimately taxed for governmental purposes. It would be an intolerable burden if a state could not tax any property or calling unless, at the same time, it taxed all property or all callings. Its discretion in such matters is very great and should be exercised solely with reference to the general welfare as involved in the necessity of taxation for the support of the state. A state may in its wisdom classify property for purposes of taxation, and the exercise of its discretion is not to be questioned in a court of the United States, so long as the classification does not invade rights secured by the constitution of the United States. But different considerations control when the state, by legis-

lation, seeks to regulate the enjoyment of rights and the pursuit of callings connected with domestic trade. In prescribing regulations for the conduct of trade, it cannot divide those engaged in trade into classes and make criminals of one class, if they do certain forbidden things, while allowing another and favored class engaged in the same domestic trade, to do the same things with impunity. It is one thing to exert the power of taxation so as to meet the expenses of government and at the same time, indirectly, to build up or protect particular interests or industries. It is quite a different thing for the state, under its general police power, to enter the domain of trade or commerce, and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of the power of classification, rests upon no reasonable basis, is purely arbitrary, and plainly denies the equal protection of the laws, to those against whom it discriminates" (184 U. S., 562, 563).

Billings vs. Illinois, 188 U. S., 102.

Cook vs. Marshall County, 196 U. S., 274.

The case of *Cook vs. Marshall County, supra*, furnishes a recent expression on the subject. There it was said of the effect of cases passing upon the validity of police regulations:

"These cases, however, have but limited application to laws imposing taxes where the right of classification is held to permit of discrimination between different trades and callings when not obviously exercised in a spirit of prejudice or favoritism. * * * This distinction was recognized by Mr. Justice Harlan in *Connolly vs. Union Sewer Pipe Co.* * * * It can scarcely be doubted that if the Connolly Case had dealt with the subject of taxation, a discriminative tax upon producers of agricultural products, either greater or less than that imposed upon other manufacturers or producers might have been held valid without denying to either party the equal protection of the laws" (196 U. S., 274).

(2) *Exemptions.* And, in matters of taxation, a special rule seems applicable to exemptions, whether the exemption be from the operation of a particular tax, or from all taxation.

In these cases, telephone companies whose gross annual receipts do not exceed $500 are not exempted from all taxation. They are exempted from the payment of the property tax under Act 49 of 1909, but are subjected to a specific tax upon gross earnings from their business under Act 179 of the Public Acts of 1899.

Both classes are taxed. The smaller properties whose gross earnings do not exceed $500 per annum, and who are engaged not in telephone business, but in securing to themselves cheap telephone service, by a system which comprehends cheap and easy tax collection and which permits their taxation to yield a revenue over and above its cost to the state, which subjection to the ad valorem system of taxation applicable to telephone companies engaged in a general telephone business would not do. The real telephone company, engaged in business for profit, the earnings of which invariably exceed $500 per year, is taxed upon the ad valorem basis. The difference in situation, namely, the different character of the institutions, the different character of business which they can and do carry on, the different means and instrumentalities of operation, the practical considerations surrounding the imposition and collection of the taxes, and the fact that upon those telephone companies not earning $500 per year, the system of ad valorem assessment would not yield a revenue, furnish distinctions, which require separate treatment and which, of themselves, furnish basis for distinction; in other words, there are differences of situations which bear a reasonable relation to the purpose for which classification is made, namely, taxation.

Understood in the light of an exemption from taxation, the Fourteenth Amendment gives no ground for a valid claim of discrimination. In the exercise of its undoubted right to select the subjects of taxation, the legislature has plenary power to excuse from the obligation of the tax, the property of particular individuals or of stated classes, and those selected to become the subjects of the tax have no ground of complaint, unless the selection and elimination are so arbitrary or capricious as to make the tax operate unjustly or unfairly.

The facts will not justify a claim of such arbitrary selection upon the part of the legislature, as the exemption proceeds within reasonable limits, eliminates but a small amount of property from the burden of the tax, and has no effect to increase or alter the burden imposed upon those corporations subjected to the tax.

The legislative authority to exempt individual persons or

property or institutions, as well as to exempt the property of entire classes, has been repeatedly sustained.

The rule as stated in the *Delaware Railroad Tax Case* (18 Wall., 206, 225), is:

> "It has also been repeatedly held by this court that the legislature of a state may exempt particular parcels of property or the property of particular persons or corporations from taxation, either for a specified period or perpetually, or may limit the amount or rate of taxation, to which such property shall be subjected. And when such immunity is conferred, or such limitation is prescribed by the charter of the corporation, it becomes a part of the contract and is equally inviolate with its other stipulations."
>
> Tomlinson vs. Branch (15 Wall., 468).

In *Hoge vs. Railroad Company* (99 U. S., 354), it was said:

> "The power of the legislature of a state to exempt particular parcels of property of individuals or of corporations from taxation, not merely during the period of its own existence, but so as to be beyond the control of the taxing power of succeeding legislatures, has been asserted in several cases by this court, although against this doctrine there have been earnest protests by individual judges."

In *Metropolitan Street Railway Co. vs. New York* (199 U. S., 47), it was said:

> "The franchises granted were, as we have held subject to taxation, and the fact that upon equitable considerations the state has consented that a certain reduction shall, in some cases be made, does not entitle every holder of a franchise to a like reduction. It is akin to an exemption, and there is nothing in the Federal Constitution to prevent a state from granting exemption from taxation."

In *Florida Central vs. Reynolds* (183 U. S., 476), it was said:

> "It is well known that the states vary materially in their systems of taxation. Each determines for itself what in its judgment is best for the interests of its people. In some there are general exemptions of particular classes of property, such as property used for religious, educational and benevolent purposes. Some, in order to encourage certain industries, such as manufacturing, make either general or special exemptions.

Some think it for their best interest to derive their revenues from personal property, corporations and licenses, and exempt real estate. In some, contracts for exemption are authorized by the state constitution; in others, they are forbidden. Now, considering the great diversity in these systems it would obviously have worked a marked revolution if the first section of the Fourteenth Amendment had been construed as compelling a cast iron rule of equal taxation. It was not intended, as held in the case quoted from, and also in *Barbier vs. Connolly*, 113 U. S., 27, to restrain the legislature from any proper and legitimate classification both as respects property for taxation and the methods of assessment and taxation. Doubtless it would prohibit a state from selecting some obnoxious person and casting upon his property the sole burden of taxation, or a burden differing from that cast upon others whose property was similarly situated, but it does not prevent a state from exercising its judgment as to the property to be taxed and the modes of taxation, providing all property similarly situated is treated in the same way."

In *Missouri vs. Dockery* (191 U. S., 170, 171), it was said:

"However this may be, the petitioner admitted at the argument that his own tax was correct; and that he would have had no case under the Fourteenth Amendment if the companies had been exempted altogether. *Magoun vs. Illinois Trust & Savings Bank*, 170 U. S., 283, 293-295; *Connolly vs. Union Sewer Pipe Co.*, 184 U. S., 540, 562. But his rights under that amendment turn on the power of the state, no matter by what organ it acts. *Virginia vs. Rives*, 100 U. S., 313, 318. Therefore, if the Supreme Court of the state construed the statutes as exempting express companies from this tax and substituting another, as it is argued on behalf of the defendants in error that the statutes do, the petitioner cannot complain here. For the legislature could exempt them, and the question whether it has done so or not is for the state courts to decide in their construction of its acts. Furthermore, if the state could grant a total exemption it could grant a partial exemption, and if it has done so, *de facto*, through its officers, the petitioner cannot come here on an allegation that the officers acted as they did without the authority of the state."

Connolly vs. Union Sewer Pipe Co., 184 U. S., 562, 563.

In *Spreckles Sugar Refining Co. vs. McClain* (192 U. S., 397), a tax upon the gross annual receipts of any corporation or company refining sugar, in excess of $250,000, was sustained.

District of Columbia vs. Brooks, 214 U. S., 150.
Board of Education vs. Illinois, 203 U. S., 563.

In *Beers vs. Glynn* (211 U. S., 484), an inheritance tax statute exempted certain classes of non-residents, and taxed a certain other class. Of the state's authority, it was said:

> "It may exempt certain property from taxation while all other is subjected thereto. * * * Indeed, it may be laid down as a general rule that mere inequalities or exemptions in the matter of state taxation are not forbidden by the Federal Constitution."

In *Merchant's Bank vs. Pennsylvania* (167 U. S., 463), it was said:

> "But this lack of uniformity in the result furnishes no ground of complaint under the Federal Constitution. Suppose, for any fair reason affecting only its internal affairs, the state should see fit to wholly exempt certain named corporations from all taxation. Of course the indirect result would be that all other property might have to pay a little larger rate per cent in order to raise the revenue necessary for the carrying on of the state government, but this would not invalidate the tax on other property, or give any right to challenge the law as obnoxious to the provision of the Federal Constitution."

Under these cases, so long as the distinction which it makes are not invidious, the legislature may select for taxation such property as it chooses, the sole requirement of the Fourteenth Amendment being that those taxed shall be treated alike.

If we concede the right to exempt particular property or the property of particular owners, and that appears to be settled beyond question, it of necessity follows that the exemption in this case is valid. The right to grant exemptions carries with it the legislative authority to determine the manner in which they shall be made. By naming the specific corporations or property exempted from the operation of Act 49 of 1909, valid exemptions might have been created and that (instead of naming or designating the specific corporations or property to be exempted) the legislature has said that all that property which falls within a given general description shall be exempted, does not make

against the constitutionality of the law or the validity of the exemption.

In Michigan exemptions of particular property have been recognized and upheld.

People vs. Auditor General, 7 Mich., 84.
Board of Supervisors vs. Auditor General, 65 Mich., 411.

(3) *Applicable presumptions.* Strong presumptions follow the validity of the legislative action, as well as its knowledge of conditions which are sufficient to constitute a basis of classification and to warrant different treatment of the classes.

Strong presumptions follow the validity of all legislation. Like presumptions attach where the attack upon it arises under the Fourteenth Amendment. It is for those raising the question to overcome the presumption and to satisfy the court that there exists no reason which would justify or render proper the classification made. If there be a distinction in the classes, the legislative action in providing for their different treatment will be attributed to it, and any difference found in the classes which the legislature has created, will be considered sufficient, unless palpably unfounded and the case is one of arbitrary selection.

In the case of *Heath & Milligan vs. Worst* (207 U. S., 355), this principle was given effect, the court in considering it saying:

> "The second and third divisions we are concerned with in this case, and it is insisted their requirements work a discrimination between mixed paints which contain and those which do not contain any ingredients other than those specified. It will be observed that the manufacture for sale and the selling of the first kind is made a misdemeanor, unless the paint be labeled as required by the statute. The manufacture or sale of the other kind is free from such consequence or condition. It is also charged that the statute discriminates between mixed paints and paste paints, it being asserted that the latter, no matter what their ingredients, need not be labelled. To this charge we may immediately answer that it is open to contest whether the act exempts paste paint from its requirements, and the executive officers of the State have construed it as not exempting them. But be this as it may, there is a distinction between the paints, and the evils to which the statute was addressed may not exist or be as flagrant in one as in the other.

There, indeed, may be a degree of competition between them, but other circumstances and conditions may have directed the legislative discretion. This record certainly does not present any data to make it certain that the discretion was arbitrarily exercised. Legislation which regulates business may well make distinctions depend upon the degrees of evil without being arbitrary or unreasonable."

Welch vs. Swasey, 214 U. S., 107.

In the case of *Ah Sin vs. Whitman* (198 U. S., 507), it was said:

"There is no averment that the conditions and practices to which the ordinance was directed did not exist exclusively among the Chinese, or that there were other offenders against the ordinance than the Chinese as to whom it was not enforced. No latitude of intention should be indulged in a case like this. There should be certainty to every intent. Plaintiff in error seeks to set aside a criminal law of the state, not on the ground that it is unconstitutional on its face, not that it is discriminatory in tendency and ultimate actual operation as the ordinance was which was passed on in the *Yick Wo case*, but that it was made so by the manner of its administration. This is a matter of proof, and no fact should be omitted to make it out completely, when the power of a Federal court is invoked to interfere with the course of criminal justice of a state."

In *Erb vs. Morasch* (177 U. S., 586), it was said:

"The contention here is that the exception of the Interstate Transit Railway Company from the provision in reference to the speed of its trains creates a classification which is arbitrary and without any reasonable basis, and, therefore, operates to deny the equal protection of the laws. *Gulf, Colorado & Santa Fe Railway vs. Ellis*, 165 U. S., 150. If there were nothing in the record beyond the mere words of the ordinance we are of opinion that that contention could not be sustained, because it is obvious on a moment's reflection that the tracks of different railroads may traverse the limits of a city under circumstances so essentially different as to justify separate regulations. One may pass through crowded parts, crossing or along streets constantly traveled upon by foot passengers and vehicles, while others may pass through remote parts of the city where there is little travel and little danger to individuals or carriages. One

may pass through such parts of the city as will prevent its tracks from being fenced and where it is not in fact fenced, while another may pass through parts which permit of the fencing of the tracks and where its tracks are in fact fenced. Under those circumstances a difference of regulation as to the matter of speed would be perfectly legitimate, and it could not be held that the classification was arbitrary or without reasonable reference to the conditions of the several roads. With the presumption always in favor of the validity of legislation, state or municipal, if the ordinance stood by itself the courts would be compelled to presume that the different circumstances surrounding the tracks of the respective railroads were such as to justify a different rule in respect to the speed of their trains."

In *Atchison, Topeka, etc. Railroad vs. Matthews* (174 U. S., 104, 106), it was said:

"It is also a maxim of constitutional law that a legislature is presumed to have acted within constitutional limits, upon full knowledge of the facts, and with the purpose of promoting the interests of the people, as a whole, and courts will not lightly hold that an act duly passed by the legislature was one in the enactment of which it has transcended its powers" (p. 104).

"Our conclusion in respect to this statute is that, for the reasons above stated, giving full force to its purpose as declared by the Supreme Court of Kansas, to the presumption which attaches to the action of a legislature that it has full knowledge of the conditions within the state, and intends no arbitrary selection or punishment, but simply seeks to subserve the general interest of the public, it must be sustained" (p. 106).

In *Missouri, Kansas & Texas Ry. Co. vs. May* (194 U. S., 269), it was said:

"It is admitted that Johnson grass is a menace to crops, that it is propagated only by seed, and that a general regulation of it for the protection of farming will be valid. It is admitted also that legislation may be directed against a class when any fair ground for the discrimination exists. But it is said that this particular subjection of railroad companies to a liability not imposed on other owners of land on which Johnson grass may grow, is so arbitrary as to amount to a denial of the equal protection of the laws. There is no dispute about general principles. The question is whether this

case lies on one side or on the other of a line which has to be worked out between cases differing only in degree. With regard to the manner in which such a question should be approached, it is obvious that the legislature is the only judge of the policy of a proposed discrimination. The principle is similar to that which is established with regard to a decision of congress, that certain means are necessary and proper to carry out one of its express powers. *McCulloch vs. Maryland*, 4 Wheat., 316. When a state legislature has declared that in its opinion policy requires a certain measure, its action should not be disturbed by the courts under the Fourteenth Amendment, unless they can see clearly that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched.

Approaching the question in this way we feel unable to say that the law before us may not have been justified by local conditions. It would have been more obviously fair to extend the regulation at least to highways. But it may have been found, for all that we know, that the seed of Johnson grass is dropped from the cars in such quantities as to cause special trouble. It may be that the neglected strips occupied by railroads afford a ground where noxious weeds especially flourish, and that whereas self-interest leads the owners of farms to keep down pests, the railroad companies have done nothing in a matter which concerns their neighbors only. Other reasons may be imagined. Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."

(4) *Reluctance to interfere with taxing systems.* The same principle is given effect in those cases which hold that, particularly in cases of taxation, the classification must be palpably improper and unreasonable, and amount to spoliation under the guise of the exercise of that power, in order to be declared invalid.

The rule was aptly expressed in *Henderson Bridge Co. vs. Henderson City* (173 U. S., 592, 614, 615), where it was said:

"But in order to bring taxation imposed by a state or under its authority within the scope of the Fourteenth Amendment of the National Constitution, the case should be so clearly and palpably an illegal encroachment upon

private rights as to leave no doubt that such taxation by its necessary operation is really spoliation under the guise of exerting the power to tax. As an act of congress should not be declared unconstitutional unless its repugnancy to the supreme law of the land is too clear to admit of dispute, so a local regulation under which taxes are imposed should not be held by the courts of the Union to be inconsistent with the National Constitution, unless that conclusion be unavoidable. All doubt as to the validity of legislative enactments must be resolved, if possible, in favor of the binding force of such enactments."

Similar language is used in *King vs. Mullins* (171 U. S., 404, 435, 436) where, in refusing to declare a state taking statute unconstitutional as violating the Fourteenth Amendment, it was said:

"The judiciary should be very reluctant to interfere with the taxing systems of a state, and should never do so unless that which the state attempts to do is in palpable violation of the constitutional rights of the owners of property."

See,

Connolly vs. Union Sewer Pipe Co., 184 U. S., 540, 562, 563.

San Diego Land and Town Co. vs. National City, 174 U. S., 754.

Florida Central, Etc., Railroad Co. vs. Reynolds, 183 U. S., 479.

Central Pacific Ry. Co. vs. Evans, 111 Fed., 76.

In *Petit vs. Minnesota* (177 U. S., 168), it was said:

"In view of all these facts, we cannot say that the legislature has exceeded the limits of its legislative police power in declaring that, as a matter of law, keeping Barbers' shops open on Sunday is not a work of necessity or charity, while as to all other kinds of labor they have left that question to be determined as one of fact.

We recognize the force of the distinctions suggested and perceive no adequate ground for interference with the wide discretion confessedly necessarily exercised by the states in these matters, by holding that the classification was so palpably arbitrary as to bring the law into conflict with the Federal Constitution."

(5) *Extent of the legislative discretion.* The question of policy of a particular measure or discretion, is not for the

courts, as has been seen; wide discretion is accorded to the legislature, and if there be any difference between the classes, it is for it to say whether in a situation relating to taxation, it will make that difference the basis of separate treatment, or even for the exemption of one of the classes.

In *Orient Insurance Co. vs. Daggs* (172 U. S., 566), the court said:

> "It would be idle and trite to say that no right is absolute. *Sic utere tuo ut alienum non laedas* is of universal and pervading obligation. It is a condition upon which all property is held. Its application to particular conditions must necessarily be within the reasonable discretion of the legislative power. When such discretion is exercised in a given case by means appropriate and which are reasonable, not oppressive or discriminatory, it is not subject to constitutional objections. The Missouri statute comes within this rule."

In *Heath & Milligan Co. vs. Worst* (207 U. S., 354), the court said:

> "We have declared many times, and illustrated the declaration, that classification must have relation to the purpose of the legislature. But logical appropriateness of the inclusion or exclusion of objections or persons is not required. A classification may not be merely arbitrary, but necessarily there must be great freedom of discretion even though it result in 'ill-advised, unequal and oppressive legislation.' *Mobile vs. Kimball*, 102 U. S., 691. And this necessarily on account of the complex problems which are presented to government. Evils must be met as they arise and according to the manner in which they arise. The right remedy may not always be apparent. Any interference, indeed, may be asserted to be evil, may result in evil. At any rate, exact wisdom and nice adaptation of remedies are not required by the Fourteenth Amendment, nor the crudeness nor the impolicy nor even the injustice of state laws redressed by it."

In *Missouri, Kansas & Texas vs. May* (194 U. S., 269), it was said:

> "When a state legislature has declared that in its opinion policy requires a certain measure, its action should not be disturbed by the courts under the Fourteenth Amendment, unless they can see clearly that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched."

In *Chicago, Burlington & Quincy vs. Iowa* (94 U. S., 164), it was said:

> "It is very clear that a uniform rate of charges for all railroad companies in the state might operate unjustly upon some. It was proper, therefore, to provide in some way for an adaptation of the rates to the circumstances of the different roads; and the general assembly, in the exercise of its legislative discretion has seen fit to do this by a system of classification. Whether this was the best that could have been done is not for us to decide. Our province is only to determine whether it could be done at all, and under any circumstances. If it could, the legislature must decide for itself, subject to no control from us, whether the common good requires that it should be done."

In *Connolly vs. Union Sewer Pipe Co.* (184 U. S., 562), it was said:

> "It would be an intolerable burden if a state could not tax any property or calling unless, at the same time it taxed all property or all callings. Its discretion in such matters is very great and should be exercised solely with reference to the general welfare as involved in the necessity of taxation for the support of the state."

In the opinion of Mr. Justice McKenna in the same case, he said:

> "There are very few exertions of government which can be made applicable to all persons as such. Government is not a simple thing. It encounters and must deal with problems which come from persons in an infinite variety of relations. Classification is the recognition of those relations, and in making it a legislature must be allowed a wide latitude of discretion and judgment. This has been decided many times against contentions based on a variety of facts" (pp. 566-7).

In *Thomas vs. Gay* (169 U. S., 283), it was said:

> "It is the law making power which is to determine all questions of discretion or policy in ordering and apportioning taxes; which must make all the necessary rules and regulations, and decide upon the agencies by means of which the taxes shall be collected. When, as may sometimes happen, the legislature transcends its functions and enacts, in the guise of a tax law, a law whereby the property of the citizen is confiscated, or taken for private purposes, the judiciary has the right and duty

to interpose. But such a case is not presented by this record."

In *Magoun vs. Illinois Trust & Savings Bank* (170 U. S., 293), it was said:

"With these for illustration it may be safely said that the rule prescribes no rigid equality and permits to the discretion and wisdom of the state a wide latitude as far as interference by this court is concerned. Nor with the impolicy of a law has it concern. Mr. Justice Field said in *Mobile County vs. Kimball*, 102 U. S., 691, that this court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive state legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of state laws is not necessarily an objection to their constitutional validity."

In *Kidd vs. Alabama* (188 U. S., 733), it was said:

"We need not repeat the commonplaces as to the large latitude allowed to the states for classification upon any reasonable basis. * * * What is reasonable is a question of practical details into which fiction cannot enter."

In *Michigan Central vs. Powers* (201 U. S., 292), it was said:

"There is no general supervision on the part of the nation over state taxation and in respect to the latter the state has, speaking generally, the freedom of a sovereign both as to objects and methods" (292).

"The only security against the abuse of this power, is found in the structure of the government itself. In imposing a tax the legislature acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation" (295).

And again, in *Providence Bank vs. Billings*, 4 Pet., 514, 563:

"This vital power may be abused; but the Constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the state governments. The interest, wisdom, and justice of the representative body, and its relation with its constitutents, furnish the only security where there is no express contract, against unjust and excessive taxation, as well as against unwise legislation generally."

In *Southwestern Oil Co. vs. Texas* (217 U. S., 126), it was said:

> "It is not arbitrary legislation, except in the sense that all legislation is arbitrary. If it be within the power of the legislature to enact the statute, then arbitrariness cannot be predicated of it in a court of law. And it cannot be held to be beyond legislative power simply because of its classification of occupations. What were the special reasons or motives inducing the State to adopt the classification of which the Oil Company complains, we do not certainly know. Nor is it important that we should certainly know. It may be that the main purpose of the State was to encourage retail dealing in the particular articles mentioned in Sec. 9. If the statute had its origin in such a view, we do not perceive that this court can deny the power of the State to proceed on that ground. We may repeat what was said in *Delaware Railroad Tax Cases*, 18 Wall., 206, 231, that 'it is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than the one prescribed by the legislature of the State; our only concern is with the validity of the tax; all else lies beyond the domain of our jurisdiction.' But we will not speculate as to the motives of the State, and will assume—the statute, either upon its face or by its necessary operation, not suggesting a contrary assumption—that the State has in good faith sought, by its legislation, to protect or promote the interests of its people. It is sufficient for the disposition of this case to say that, except as restrained by its own constitution or by the Constitution of the United States, the State of Texas, by its Legislature, has full power to prescribe any system of taxation which, in its judgment, is best or necessary for its people and government; that, so far as the power of the United States is concerned, the State has the right, by any rule it deems proper, to classify persons or businesses for the purposes of taxation, subject to the condition that such classification shall not be in violation of the Constitution of the United States; that the requirement by the State, that *all* wholesale dealers in *specified articles* shall pay a tax of a given amount on their occupation, without exacting a similar tax on the occupations of wholesale dealers in other articles, cannot, on the face of the statute, or by reason of any facts within the judicial knowledge of the court, be held, within the meaning of the Fourteenth Amendment, to deprive the taxpayer of his property

without due process of law or to deny him the equal protection of the laws; and that the Federal court cannot interfere with the enforcement of the statute simply because it may disapprove its terms, or question the wisdom of its enactment, or because it cannot be sure as to the precise reasons inducing the State to enact it."

In *Watson vs. Maryland* (218 U. S., 179), it was said:

"Before a law of this kind can be declared violative of the Fourteenth Amendment as an unreasonable classification of the subjects of such legislation because of the omission of certain classes, the court must be able to say that there is 'no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched.'"

In *Louisville & Nashville vs. Melton* (218 U. S., 52), it was said:

"That the Fourteenth Amendment was not intended to and does not strip the States of the power to exert their lawful police authority is settled, and requires no reference to authorities. And it is equally settled—as we shall hereafter take occasion to show—as the essential result of the elementary doctrine that the equal protection of the law clause does not restrain the normal exercise of governmental power, but only abuse in the exertion of such authority, therefore that clause is not offended against simply because as the result of the exercise of the power to classify some inequality may be occasioned. That is to say, as the power to classify is not taken away by the operation of the equal protection of the law clause, a wide scope of the legislative discretion may be exerted in classifying without conflicting with the constitutional prohibition."

Griffith vs. Connecticut, 218 U. S., 569.

Chicago, B. & Q. vs. McGuire, 219 U. S., 569.

(6) *The discrimination must be against those complaining.* The complainants must themselves be affected by the discrimination. If they are not, they cannot claim the benefit of a discrimination made against other persons or property, or represent those persons or that property in an attempt to set aside the law.

Two classes are made by the act in question, one that to which the complainants belong, i. e. telephone companies whose gross earnings exceed $500 per annum. The complain-

ants as members of that class are companies possessing large property and doing general telephone business extending throughout the state or into a considerable portion of it; the other class is that made up of those companies earning not exceeding $500 per annum, and is made up, with a rare and occasional exception, if any, of those companies which do not operate general telephone business, but which are mutual concerns organized and conducted for the sole purpose of securing to their members cheap telephone rates.

It is possible that certain institutions like those exempted, are found within the classes taxed. But none of the complainants are of that character. If a discrimination did exist among these mutual, co-operative and non-profit making institutions, it would not affect the complainants, nor entitle them to question the validity of the law. The basis of any claim to relief which they can advance, is that they are discriminated against, and if the constituents of the exempted class are of the character that the legislature could select for the purpose of subjecting them to a different rule of taxation, or absolute exemption, while the property of the four complainants is taxed, there is no discrimination against complainants. This has been many times adjudicated.

In *Waters-Pierce Oil Co. vs. Texas* (177 U. S., 43), it was said:

> "Considerations have been presented which transcend them, and relate to grievances which do not affect plaintiff in error. We are confined to its grievance."

In *Lampasas vs. Bell* (180 U. S., 283), the court say:

> "It is contended that the residents of the territory incorporated in 1883, were not given an opportunity to be heard 'whether they should or should not be included in or made subject to taxation in the proposed corporation.' It is hence deduced that the incorporation of 1883 was wholly void and in consequence the bonds sued on were also wholly void, because the law of the state under which the incorporation was made, * * * was in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States. But what concern is it of the plaintiff in error whether the residents of such territory were or were not given an opportunity to be heard? It had no proprietary right or interest in 'territory proposed to be incorporated'; *it* was put to no hazard of taxation without a hearing, nor can it stand in judgment for those who had such interest or were put to such hazard. It was certainly the right of the residents of the

territory to submit to incorporation and accept its burdens and its benefits. And the record shows that there was no question of its validity for six years. When questioned it was not on the ground that it was incorporated under an unconstitutional statute—not on the ground that it was imposed without a hearing on unwilling subjects—but on the ground that the prior incorporation of 1873 had not ceased to exist.

We said in *Clark vs. Kansas City*, 176 U. S., 114 (quoting from Cooley's Constitutional Limitations, section 196), that 'a court will not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect, and who has therefore no interest in defeating it.' That is, a legal interest in defeating it. The objection of unconstitutionality of a statute must be made by one having the right to make it, not by a stranger to its grievance."

In *Cronin vs. Denver* (192 U. S., 114), it was said:

"What cause of action, then has plaintiff in error? He is not a female nor delegated to champion any grievance females may have under the ordinance, if they have any."

In *Smiley vs. Kansas* (196 U. S., 457), it was said:

"He cannot be heard to object to the statute merely because it operates oppressively upon others. The hurt must be to himself. The case, under appellant's contention as to this point, is not a case of favoritism in the law. It is not a case of exclusion of classes who ought to have been included, the leaving out of which constitutes a denial of the equal protection of the law, but it is the opposite of that. It is a case of the inclusion of those who ought to have been excluded. Hence, unless appellant can show that he himself has been wrongfully included in the terms of the law, he can have no just ground of complaint. This is fundamental and decisively settled."

In *Marvin vs. Trout* (199 U. S., 227), it was said:

"If the statute do mean that such prior judgment is conclusive, what legal interest has the plaintiff in error in the question when there is other evidence in his case, although given against his objection, that there was no issue on that fact? The whole statute is not void, even if it mean that the judgment is conclusive, and when other evidence is given the (alleged) invalid provision is

eliminated in such case, and the party who insists there is no issue as to loss, not being harmed, cannot raise the question."

In *Hatch vs. Reardon* (204 U. S., 160), it was said:

"But there is a point beyond which this court does not consider arguments of this sort for the purpose of invalidating the tax laws of a state on constitutional grounds. This limit has been fixed in many cases. It is that unless the party setting up the unconstitutionality of the state law belong to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all."

In *The Winnebago* (205 U. S., 360), it was said:

"In a case from a state court, this court does not listen to objections of those who do not come within the class whose constitutional rights are alleged to be invaded; or hold a law unconstitutional because, as against the class making no complaint, the law might be so held."

In *Lee vs. New Jersey* (207 U. S., 70), it was said:

"It is well settled in this court that, because a state statute when enforced in a state court against a class to which the party complaining does not belong, may work a deprivation of constitutional rights, that fact does not authorize the reversal of a judgment of a state court not enforcing the statute so as to deprive the party complaining of rights which are protected by the Federal Constitution."

Interstate Consolidated vs. Massachusetts, 207 U. S., 86.
Braxton County Court vs. West Virginia, 208 U. S., 197.
Supervisors vs. Stanley, 105 U. S., 316.
Wilcox vs. Consolidated Gas Co., 212 U. S., 54.
Engel vs. O'Malley, 219 U. S., 135.
Lindsley vs. Natural Carbonic Gas Co., 220 U. S., 61.
Williams vs. Walsh, 222 U. S., 423-424.
Keeney vs. New York, 222 U. S., 536.
Collins vs. Texas, 223 U. S., 295.
Murphy vs. California, 225 U. S., 630.

It is true that the exemption in this case is not arrived at by a reference in the statute to differences based upon the character of the business which the different classes are doing. It is arrived at upon the basis of gross earnings which is, in itself proper basis for classification. But whatever the basis stated in the statute, it can be attacked only for actual discrimination; if it appear that the two classes are engaged in business of different character, or the property taxed and exempted from the ad valorem system is in different situations or put to different uses, then there is no discrimination.

Had the statute expressly placed the classification upon the ground that those exempted were engaged in the mutual or co-operative operation of telephones, there would have been no question as to its validity or to the right of complainants to successfully complain. If such be the fact, it is immaterial what basis of measurement the legislature referred to to separate the classes.

Home Insurance Co. vs. New York, 134 U. S., 600.
Postal Telegraph Co. vs. Adams, 155 U. S., 698.
State Freight Tax Case, 15 Wall, 272.

(7) *Effect of partial invalidity.* There is no question as to a classification separating telephone companies doing general telephone business from those institutions mutual in character, which do not operate for profit, other than the securing of cheap telephones to themselves, and which in fact do not and are not in a position to operate a telephone line.

We approach nearer to the dividing line of what is and what is not legitimate classification when we divide telephone companies into those whose earnings do and those whose earnings do not exceed $500 per annum. Under the decisions, however, this in itself is proper classification.

If there can be any question as to the validity of the statute, it would be this, that the act is invalid in taxing those institutions which are co-operative or mutual and operate without real profit, while exempting the same institutions where the gross annual earnings do not exceed $500 per year. But should there be invalidity on this ground, it does not mean that the entire statute is invalid. It simply means that the part of the act which includes and taxes property operated by associations for mutual advantage of their members, would be invalid. This would not affect the complainants and those institutions like them doing general telephone business; as to them the statute would be valid.

The general rule on which this conclusion is founded is

well stated in Cooley's Constitutional Limitations (7th Ed.), as follows:

> "It will sometimes be found that an act of the legislature is opposed in some of its provisions to the constitution, while others, standing by themselves, would be unobjectionable. * * * Where, therefore, a part of a statute is unconstitutional, that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning, that it can not be presumed the legislature would have passed the one without the other (pp. 246-7).
>
> A legislative act may be entirely valid as to some classes of cases, and clearly void as to others. * * * In any such case the unconstitutional law must operate as far as it can, and it will not be held invalid on the objection of a party whose interests are not affected by it in a manner which the constitution forbids. If there are any exceptions to this rule, they must be of cases only where it is evident, from a contemplation of the statute and of the purpose to be accomplished by it, that it would not have been passed at all, except as an entirety, and that the general purpose of the legislature will be defeated if it shall be held valid as to some cases and void as to others" (p. 250).

In numerous cases, acts general in scope have been limited by the exclusion of persons or corporations not properly within the particular class to which the statute related and the remainder of the statute held valid and enforced; illustrations of this are found in *Tullis vs. Lake Erie & Pennsylvania* (175 U. S., 351), where it was said:

> "In *Pittsburg, etc., Railroad Company vs. Montgomery*, 152 Indiana, 1, the statute in question was held valid as to railroad companies, and it was also held that objection to its validity could not be made by such companies on the ground that it embraced all corporations except municipal, and that there were some corporations whose business would not bring them within the reason of the classification. In announcing the latter conclusion the court ruled in effect that the act was capable of severance; that its relation to railroad corporations was not essentially and inseparably connected in substance with its relation to other corporations; and that, therefore, whether it was constitutional or not, as to other corpora-

tions, it might be sustained as to railroad corporations.

In *Leep vs. Railway Company*, 58 Arkansas, 407, and *St. Louis, Iron Mountain, etc., Railway vs. Paul*, 64 Arkansas, 83, an act of Arkansas of March 25, 1889, was held unconstitutional by the Supreme Court of that state so far as affecting natural persons, and sustained in respect of corporations; and in *St. Louis, Iron Mountain, etc., Railway vs. Paul*, 173 U. S., 404, that view of the act was accepted by this court because that court had so decided."

In *Hatch vs. Reardon* (204 U. S., 160-1), it was said:

"If the law is valid when confined to the class of the party before the court, it may be more or less of a speculation to inquire what exceptions the state court may read into general words, or how far it may sustain an act that partially fails. With regard to taxes, especially, perhaps it might be assumed that the legislature meant them to be valid to whatever extent they could be sustained, or some other peculiar principle might be applied."

In *New York Central vs. United States* (212 U. S., 496), in sustaining a statute so far as applicable to corporations, the court said:

"We think the answer to this proposition is obvious; the plaintiff in error is a corporation, and the provision as to its responsibility for acts of its agents is specifically stated in the first paragraph of the section. There is no individual in this case complaining of the unconstitutionality of the act, if objectionable on that ground, and the case does not come within that class of cases in which unconstitutional provisions are so interblended with valid ones that the whole act must fall, notwithstanding its constitutionality is challenged by one who might be legally brought within its provisions. *Employers' Liability Cases*, 207 U. S., 463. It may be doubted whether there are any individual carriers engaged in interstate commerce, and every act is to be construed so as to maintain its constitutionality if possible. There can be no question that congress would have applied these provisions to corporation carriers, whether individuals were included or not. In this view the act is valid as to corporations."

In *Berea College vs. Kentucky* (211 U. S.,54-5), the court said:

"The act of 1904 forbids 'any person, corporation or

association of persons to maintain or operate any college,' etc. Such a statute may conflict with the Federal Constitution in denying to individuals powers which they may rightfully exercise, and yet, at the same time, be valid as to a corporation created by the state.

It may be said that the Court of Appeals sustained the validity of this section of the statute, both against individuals and corporations. It ruled that the legislation was within the power of the state, and that the state might rightfully thus restrain all individuals, corporations and associations. But it is unnecessary for us to consider anything more than the question of its validity as applied to corporations.

The statute is clearly separable and may be valid as to one class while invalid as to another. Even if it were conceded that its assertion of power over individuals cannot be sustained, still it must be upheld so far as it restrains corporations.

There is no force in the suggestion that the statute, although clearly separable, must stand or fall as an entirety on the ground the legislature would not have enacted one part unless it could reach all. That the legislature of Kentucky desired to separate the teaching of white and colored children may be conceded, but it by no means follows that it would not have enforced the separation so far as it could do so, even though it could not make it effective under all circumstances. In other words, it is not at all unreasonable to believe that the legislature, although advised beforehand of the constitutional question, might have prohibited all organizations and corporations under its control from teaching white and colored children together, and thus made at least uniform official action. The rule of construction in questions of this nature is stated by Chief Justice Shaw in *Warren vs. Mayor of Charlestown*, 2 Gray, 84, quoted approvingly by this court in *Allen vs. Louisiana*, 103 U. S. 80-84.

'But if they are so mutually connected with and dependent on each other, as conditions, considerations or compensations for each other as to warrant a belief that the legislature intended them as a whole, and that if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional or connected, must fall with them.' "

V.

Specific instances of classification sustained. The instances where classification for taxation has been overthrown by the courts have been very rare. No instance of that kind can be found where *any* difference existed between the classes fixed, it being left in those cases to the legislature to say what difference in treatment the distinction in character or in situation required or warranted. Thus it has been held:

That there may be rules of distinction within the class taxed. (*Cooley on Taxation* (3rd Ed.), 261.)

Central of New Jersey vs. Board of Assessors, 67 Atl. 672, 75 N. J. L. (Vroom), 120.

(1) In the matter of exemptions it has been held that the following exemptions are proper:

Exemption of tracts of less than 1,000 acres from the provisions of an act relative to listing of lands for taxation (*King vs. Mullins*, 171 U. S., 435); exemption of those whose gross annual earnings do not exceed $1,000 from a license tax upon hotel keepers (*Cobb vs. Commissioners*, 122 N. C., 311, 30 S. E., 338); in taxation of sales upon exchanges the exclusion of all other sales (*Nicol vs. Ames*, 173 U. S., 521); exemption of express companies owning their own means of transportation, from a taxing statute directed to those express companies, operating under contracts with railroads (*Pacific Express Co. vs. Seibert*, 142 U. S., 353); exemptions of producers of wine from grapes grown within the state from a statute regulating the manufacture and sale of liquors (*Cox vs. Texas*, 202 U. S., 450-1); exemption of packers of vegetables from a statute for the taxation of packers (*Armour Packing Co. vs. Lacy*, 200 U. S., 236); exemption of sales of bonds in the taxation of sales of stocks (*Hatch vs. Reardon*, 204 U. S., 158); exemption of planters and farmers, grinding and refining their own sugar, in taxing the business of refining sugar (*American Sugar Refining Co. vs. Louisiana*, 179 U. S., 80. See also, *Ex Parte Brown*, 38 Fed., 435); exemption of a steam railway from an ordinance taxing a street railway, where both do similar business in the municipality (*Savannah, etc., Ry. vs. Savannah*, 198 U. S., 392); exemption of subsurface railways from a statute taxing street railway franchises (*Metropolitan Street Railway Co. vs. New York*, 199

U. S., 1); exemption of logging railroads from system for ad valorem taxation of corporate railroad property (*Michigan Central vs. Powers*, 138 Fed., 240-1; 201 U. S., 245); exemption of bequest to domestic corporation, while bequest to foreign corporation, taxed (*Board of Education vs. Illinois*, 203 U. S., 553; see also, *Southern Ry. vs. Greene*, 216 U. S., 406); the exemption of county mutuals from a statute applicable to insurance companies (*Iowa Mutual Insurance Co. vs. Gilberson*, 109 Iowa, 658; 106 N. W., 156); the exemption of dealers in patented articles from police statute regulating sales (*Ozan vs. Union County National Bank*, 207 U. S., 251); exempting a railroad operated with dummy engines from a limitation upon the speed of railroad trains (*Erb vs. Morasch*, 177 U. S., 586); exemption of elevator companies, off the line of a railroad, from a statute regulating the business of such companies (*Cargill vs. Minnesota*, 180 U. S., 463); exemption of mines employing a limited number of men, from police regulations applying to mines generally (*St. Louis Con. Coal Co. vs. Illinois*, 185 U. S., 203; *McLean vs. Arkansas*, 211 U. S., 539. *See also, Quong Wing vs. Kirkendall*, 223 U. S., 60); exemption of railroads whose lines were less than fifty miles in length, from a police regulation applicable to railroad companies (*N. Y., N. H. & H. R. Co. vs. New York*, 165 U. S., 628); exemption of butter from a prohibition upon using coloring matter in oleomargarine (*Capital City Dairy Co. vs. Ohio*, 183 U. S., 238); exemption of druggists and manufacturers from the operation of prohibitory liquor laws (*Ohio vs. Dollison*, 194 U. S., 445); exemption of uncompleted railroads from a statute fixing the liability of master to servant (*Minnesota vs. Kline*, 199 U. S., 597); exemptions of transfers, intended to take effect on the death of some person other than the grantor or the happening of a contingency, permitted while transfers intended to take effect at, or being in contemplation of, the death of the donor, were taxable (*Keeney vs. New York*, 222 U. S., 537).

(2) Classification with reference to amount of earnings or dividends, or volume of business, or size has also been sustained in a variety of instances:

A tax upon business graduated in rate, and varying with the amount of the dividends paid, upheld (*Home Insurance Co. vs. New York*, 134 U. S., 593; 119 U. S., 129); a tax graduated upon, and varying with, the amount of gross receipts of a railroad, was approved (*Maine vs. Grand Trunk*, 142 U. S., 225, *Charlotte, Columbia and Augusta vs. Gibbes*, 142 U. S., 386, 394); a graduated tax upon business, the rate varying

with the gross amount of business done, sustained (*Clark vs. Titusville*, 184 U. S., 331); a graduated tax varying in rate with the amount received by the legatee and with the degree of relationship to decedent, sustained (*Magoun vs. Illinois*, 170 U. S., 283; *Billings vs. Illinois*, 188 U. S., 102, *Knowlton vs. Moore*, 178 U. S., 41); statute applying different rules and rates to taxation of telephone companies having over 1,000 miles of wire in the state, than applied to those having less, sustained (*Postal Telegraph Co. vs. Adams*, 155 U. S., 698); graduated rates of charge varying according to the volume of railroad rates of charge, dependent upon the amount of the business done, may be provided (*Chicago, Burlington & Quincy vs. Iowa*, 94 U. S., 163); adjustment and graduation of gross earnings per mile, approved (*Wellman vs. Grand Trunk*, 83 Mich., 592; 143 U. S., 349); rates of charge varying in amount, dependent upon the portion of the state in which railway lines lay, was upheld (*Wellman vs. Grand Trunk*, 83 Mich., 592; 143 U. S., 349); rates of charge varying with the length of line of the railway were upheld (*Dow vs. Biedelman*, 125 U. S., 680); where size is an index, discrimination may be made between the great and small (*Engle vs. O'Malley*, 219 U. S., 128); for a review of the state cases permitting classification upon the amount of business done, for the purposes of license and privilege taxes, see Vol. 46, Co-op. Ed. of U. S. S. C., 569.

(3) Other instances of classification sustained:

Life and health insurance companies were held properly placed in a different class from mutual and relief associations of the same character (*Fidelity Mutual Life vs. Mettler*, 185 U. S., 326, 328); companies engaged in fire insurance business were held properly classified, differently from those engaged in other kinds of insurance (*Orient Insurance Co. vs. Daggs*, 172 U. S., 562); persons suffering direct damages from acts of others may be placed in a different class from those suffering consequential damages (*Marchant vs. Pennsylvania R. R.*, 153 U. S., 389), applying different regulations to producing and non-producing vendors of milk, held to constitute proper classification (*St. John vs. New York*, 201 U. S., 633); persons and corporations may properly be separately classified where the object of the legislation was the inspection of corporate books (*Hammond vs. Arkansas*, 212 U. S., 344-349; *Consolidated Rendering Co. vs. Vermont*, 207 U. S., 555); distinctions in taxation may be made between those selling the same article at wholesale and

at retail (*Cook vs. Marshall County*, 196 U. S., 274); for taxation a distinction between residents and non-residents of the state, has been permitted (*Field vs. Barber Asphalt Paving Co.*, 194 U. S., 618; *Brooke vs. District of Columbia*, 214 U. S., 138; *Travelers Insurance Co. vs. Conn.*, 185 U. S., 364; *Ballard vs. Hunter*, 204 U. S., 241; *Kansas vs. Western Union*, 216 U. S., 1); in taxation, a distinction between corporate bonds and other moneyed securities was upheld (*Bell's Gap vs. Pennsylvania*, 134 U. S., 236); steam railroads may be classified by themselves in applying the master and servant rule (*Missouri Pacific vs. Mackey*, 127 U. S., 205); without violating the Fourteenth Amendment, those engaged in a special business, may be put into a class by themselves (*Seaboard Air Line vs. Seegers*, 207 U. S., 73, and *Louisville & Nashville vs. Melton*, 218 U. S., 36), and distinctions between agricultural and other lands, permissible (*Clark vs. Kansas City*, 176 U. S., 114); distinctions were permitted between stock held, in the state, of foreign and of domestic railroads (*Kidd vs. Alabama*, 188 U. S., 730).

Applying a statute prohibiting drumming or soliciting on trains for business to a limited class, upheld (*Williams vs. Arkansas*, 217 U. S., 79); an occupation tax upon wholesalers in coal and mineral oils, upheld, though not applied to wholesalers in other articles (*South Western Oil Company vs. Texas*, 217 U. S., 114); a different method for determining the guilt of a corporation from that of an individual may be applied without violating the Fourteenth Amendment (*Standard Oil Company vs. Tennessee*, 217 U. S., 420); a license tax on persons compounding, rectifying, adulterating or blending distilled spirits, not invalid because not extended to distillers and rectifiers of straight distilled spirits (*Brown-Forman Company vs. Kentucky*, 217 U. S., 563); a statute directed against pumping from wells drilled into the rock, but not against pumping from wells not penetrating the rock, upheld (*Lindsley vs. Natural Carbonic Gas Co.*, 220 U. S., 79); a statute requiring the turning of abandoned funds in savings banks over to the public receiver, but not applying to other than savings banks, upheld (*Providence Savings Institution vs. Malone*, 221 U. S., 660); classifying cities and incorporated subdivisions differently in imposing liability for damages by mobs and riots, held not to violate the Fourteenth Amendment (*Chicago vs. Sturgis*, 222 U. S., 313); classification of all railroad employees together, without regard to particular hazards, in an employers' liability law, upheld (*Second Employers' Liability Cases*, 223 U. S., 1; *Mobile, Jackson and Kansas City vs. Turnispeed*, 219 U. S., 35;

Louisville and Nashville vs. Melton, 218 U. S., 36); classification of second and third offenders differently in the procedure for conviction, held not improper (*Graham vs. West Virginia*, 224 U. S., 616); the application of different means of enforcement of taxes under $300 from those employed where the delinquent tax exceeded that amount, upheld (*Sawyer vs. Dooley*, 21 Nev., 390).

VI.

A few recognized grounds of classification which sustain that here made.

(1) Practical considerations in the collection of taxes is a valid reason for discrimination. Taxes are levied for purposes of revenue. It is manifest that to be profitable, taxes upon business or property must be sufficient in size that the amount of tax will cover the expense of assessment and collection. Very small properties may not yield sufficient return to produce any revenue above the cost of levying the tax. It would be senseless and absurd to say that the legislature must tax those small properties at a loss, or at a small margin of profit at the hazard of violating the Fourteenth Amendment.

It is for the legislature to weigh practical considerations and say where profitable taxation can begin; it may exempt those properties which, in its judgment, would not produce sufficient return to justify the tax, or may subject them to some other and less expensive method of taxation, such as the imposition of the specific tax to which they are subjected here.

Practical considerations, while not of identical character with those affecting this case, were held to justify different classification and different treatment in the following cases:

In *Hatch vs. Reardon* (204 U. S., 159), it was said:

> "The inequality of the tax, so far as equal values are concerned, is manifest. But here again equality in this sense has to yield to practical considerations and usage. There must be a fixed and indisputable mode of ascertaining a stamp tax."

In *St. Johns vs. New York* (201 U. S., 637), it was said:

> "Not only the final purpose of the law must be con-

sidered, but the means of its administration—the ways it may be defeated."

Field vs. Barber Asphalt Co., 194 U. S., 622.
District of Columbia vs. Brooke, 214 U. S., 150.
Shelvin-Carpenter Co. vs. Minnesota, 218 U. S., 69.

(2) Classification separating and applying different rules to profit making and mutual or co-operative concerns, has been made, in a great variety of instances, in practically every state. The classification is so clearly proper that its propriety has rarely been questioned or presented to the courts for decision. In the cases in which it has been presented, the classification has been sustained.

In *Fidelity Mutual Life Assn. vs. Mettler* (185 U. S., 326-328), the life and health insurance companies in business for profit, were held to be properly placed in a different class from mutual and relief associations of the same character.

In *Iowa Mutual Insurance Co. vs. Gilberson* (109 Iowa, 658; 106 N. W., 156), the exemption of county mutuals from a statute applicable to insurance companies was upheld.

(3) The operations of the exempted properties are, almost without exception, different from those of complainants, and from those of all but a few of the taxed companies. The exempted companies are rural and co-operative lines, being associations of farmers whose sole purpose in owning telephone lines is to obtain cheap telephone rental. These rural lines own and operate no exchanges. They are simply extensions of, and are furnished service by, one of the complainants, or a similar company, and are not in fact engaged in telephone business, but even if we treat them as engaged in telephone business, their ownership, their operation, the reason for their coming into existence, the purpose which they serve, and everything concerning them, is such that not only are they not improperly classed by themselves, but, that it would be more productive of inequality to put them in the same class for taxation as the property of the profit making telephone lines engaged in general telephone business.

A distinction, not so vivid as that in this case, was recognized in *Pacific Express Co. vs. Seibert* (142 U. S., 354), where express companies who carried on the business of transportation on contracts for hire with railroad or steamboat companies were comprehended within a system for the

taxation of express companies which excluded express companies owning their own means of transportation. Of the objection that this was unjust discrimination, the court said:

> "The fallacy of this argument lies in the assumption that the definition of what shall constitute an express company excludes from the classification companies which are as much engaged in the business, or as much under the same conditions, as are those which, under the definition, are subject to the tax.
>
> The legislation in question cannot be considered as invidiously discriminating against the express companies defined by it and in favor of other companies or persons that may carry express matter on certain other conditions or under different circumstances. There is an essential difference between express companies defined by this act and railroad or steamboat companies or other companies that own their own means of transportation. The vital distinction is this: Railroad companies pay taxes on their road-beds, rolling stock and other tangible property as well as, generally, upon their franchise; and steamboat companies likewise pay a tax upon their tangible property. This tax is not necessarily an ad valorem tax at the same rate as is paid on other private property in the state belonging to individuals. Generally, indeed, it is not, but is often determined by other means and at different rates, according to the will of the state legislature. *Kentucky Railroad Tax Cases*, 115 U. S., 321, 337. On the other hand, express companies, such as are defined by this act, have no tangible property, of any consequence, subject to taxation under the general laws. There is, therefore, no way by which they can be taxed at all unless by a tax upon their receipts for business transacted. This distinction clearly places express companies defined by this act in a separate class from companies owning their own means of transportation. They do not do business under the same conditions, or under similar circumstances. In the nature of things, and irrespective of the definite legislation in question, they belong to different classes."

In other instances the distinction has been made between profit making and non-profit making companies or organizations, in fixing the taxable or exemption character of their property.

Mundy v. Van Hoose, 104 Ga., 292.
Montgomery v. Wyman, 130 Ill., 17.

People v. Ryan, 138 Ill., 263.
City of Henderson v. McCullagh, 89 Ky., 448.
Trustees v. City of Louisville, 100 Ky., 470.
People v. Ravenswood Hospital, 238 Ill., 137.

(4) The graduated tax permitted upon the privilege of inheritance, varying with the amount of the legacy, the graduated tax upon business varying with the amount of gross income, the privilege tax upon corporations varying with the dividend paying capacity, the graduated tax upon railroads varying with the gross income per mile, the graduated schedule of rates varying with the gross income per mile or with the length of the line upon which imposed, all furnish instances of classification which directly apply to and govern the classification made here.

The only distinction between those cases and this, are that those cases are instances of specific taxation, while this is a case of a direct tax upon property.

There is no attempt here to graduate the tax, or to fix the liability therefor, dependent upon the amount or value of the property. The imposition or non-imposition of the tax results from the application of a feature of difference which bears a direct and reasonable relation to the purpose for which the classification is made, namely, the earning ability of the property taxed. Regardless of its size or value it is exempted if it produces earnings of less than $500 per annum, and taxable if it produces earnings exceeding that amount.

An instance of similar classification in the imposition of a property tax, is found in *King vs. Mullins* (171 U. S., 435), where the system of taxation objected to excluded from its operation, tracts of land of less than 1,000 acres in area. The classification in that case was held good, the court saying:

> "Another point made by the plaintiff in error is, that the provision of the constitution of Virginia exempting tracts of less than one thousand acres from forfeiture is a discrimination against the owners of tracts containing one thousand acres or more, which amounts to a denial to citizens or land owners of the latter class of the equal protection of the laws. We do not concur in this view. The evil intended to be remedied by the constitution and laws of West Virginia was the persistent failure of those who owned or claimed to own large tracts of lands, patented in the last century, or early in the present century, to put them on the land books, so that the extent and boundaries of such tracts could be easily ascertained

by the officers charged with the duty of assessing and collecting taxes. Where the tract was a small one the probability was that it was actually occupied by some one, and its extent or boundary could be easily ascertained for purposes of assessment and taxation. We can well understand why one policy could be properly adopted as to large tracts which the necessities of the public revenue did not require to be prescribed as to small tracts. The judiciary should be very reluctant to interfere with the taxing systems of a state, and should never do so unless that which the state attempts to do is in palpable violation of the constitutional rights of the owners of property. Under this view of our duty, we are unwilling to hold that the provision referred to is repugnant to the clause of the Fourteenth Amendment forbidding a denial of the equal protection of the laws."

The language of the court in sustaining the Illinois inheritance tax in *Magoun vs. Illinois Trust & Savings Bank* (170 U. S., 283), is clearly applicable to this situation. The graduated inheritance tax of Illinois was before the court. That statute exempted certain small estates and graduated the tax upon larger estates, basing the graduation upon the degree of relationship and the amount of the legacy and imposed rates varying from $1 to $6 per hundred.

The court said, (p. 298):

"In this view the Illinois court is in harmony with the majority of other courts of the country. We concur in the reasoning. It is true that the amount of the exemption is greater in the Illinois law than in any other, but the right to exempt cannot depend on that. Whether it shall be $20,000 as in Illinois law, or $10,000, as in that of Massachusetts, or other amounts as in other laws, must depend upon the judgment of the legislature of each state, and cannot be subject to judicial review. If such review could ascertain the factors of judgment and could apply them with indisputable wisdom to the different conditions existing, it would be outside of its province to do so. That manifestly is a legislative, not a judicial, function.

The first and second cases, therefore, of the statute depend on substantial distinctions and their classifications are not arbitrary. Nor do the exemptions of the statute render its operation unequal within the meaning of the Fourteenth Amendment. 'The right to make exemptions is involved in the right to select the subjects of taxation

and apportion the public burdens among them, and must consequently be understood to exist in the law-making power wherever it has not in terms been taken away. To some extent it must exist always for the selection of subjects of taxation is of itself an exemption of what is not selected.' Cooley on Taxation, 200. See, also, remarks of Mr. Justice Bradley, in *Bell's Gap Railroad vs. Pennsylvania*, 134 U. S., 232.

The provisions of the statute in regard to the tax on legacies to strangers to the blood of an intestate need further comment. These provisions are as follows:

'On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount on all estates of ten thousand dollars and less, three dollars; on all estates over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; and on all estates over fifty thousand dollars, six dollars; provided, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.'

There are four classes created, and manifestly there is equality between the members of each class. Inequality is only found by comparing the members of one class with those of another. It is illustrated by appellant as follows: One who receives a legacy of $10,000 pays 3 per cent, or $300, thus receiving $9,700 net; while one receiving a legacy of $10,001 pays 4 per cent on the whole amount, or $400.04, thus receiving $9,600.96, or $99.04 less than the one whose legacy was actually one dollar less valuable. This method is applied throughout the class.

These, however, are conceded to be extreme illustrations, and, we think, therefore, that they furnish no test of the practical operation of the classification. When the legacies differ in substantial extent, if the rate increases the benefit increases to greater degree.

If there is unsoundness it must be in the classification. The members of each class are treated alike, that is to say, all who inherit $10,000 are treated alike; all who inherit any other sum are treated alike. There is equality therefore within the classes. If there is inequality it must be because the members of a class are arbitrarily made such and burdened as such upon no distinctions justifying it. This is claimed. It is said that the tax is

not in proportion to the amount, but varies with the amounts arbitrarily fixed, and hence that an inheritance of $10,000 or less pays 3 per cent, and that one over $10,000 pays not 3 per cent on $10,000 and an increased percentage on the excess over $10,000, but an increased percentage on the $10,000 as well as on the excess, and it is said as we have seen, that in consequence one who is given a legacy of ten thousand and one dollars by the deduction of the tax receives $99.04 less than one who is given a legacy of $10,000. But neither case can be said to be contrary to the rule of equality of the Fourteenth Amendment. That rule does not require, as we have seen, exact equality of taxation. It only requires that the law imposing it shall operate on all alike under the same circumstances. The tax is not on money; it is on the right to inherit; and hence a condition of inheritance, and it may be graded according to the value of that inheritance. The condition is not arbitrary because it is determined by that value; it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat 'all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed.' The jurisdiction of courts is fixed by amounts. The right of appeal is. As was said at bar, the congress of the United States has classified the right of suitors to come into the United States courts by amounts. Regarding these alone, there is the same inequality that is urged against classification of the Illinois law. All license laws and all specific taxes have in them an element of inequality, nevertheless they are universally imposed and their legality has never been questioned."

Postal Telegraph & Cable Co. vs. Adams, 155 U. S., 698.

In *Clark vs. Titusville* (184 U. S., 329), the tax upon the business of persons engaged in the sale of merchandise was graduated, there being ten classes, based upon the minimum and maximum amount of sales, with a different tax for each class. The court sustained the classification made, quoted at length from *Magoun vs. Illinois Trust & Savings Bank* (170 U. S., 283), and in holding that the principle of that case was not limited to the taxation of inheritances, said:

"These objections are but the expression of the effect of classification by amount, and have been made before and considered before by this court, and the judgment

has been adverse to the contention of plaintiff in error."

The principle which permits a reference to earnings to determine the amount of tax to be imposed upon the right to do business, permits a like reference to earnings to determine the amount of tax upon property of other kinds. That the right to engage in business is a property right, is amply sustained; thus in the *Slaughter House Cases* (16 Wall., 36), it was held that a man's business, occupation, profession or calling is property guaranteed and protected by the United States Constitution.

Holden vs. Hardy, 169 U. S., 391.
Allegyer vs. Louisiana, 165 U. S., 578, 589.
Butcher's Union Co. vs. Crescent City, 111 U. S., 757.
Ficklen vs. Shelby County, 145 U. S., 24.

(5) The complainant companies are companies of large mileage, which do a great volume of business. The exempted companies are confined to a limited locality, and do not exceed in mileage fifteen miles in length, the average being seven or eight miles. This is a basis for discriminating taxation. In the case of *N. Y., N. H. & H. R. vs. New York* (165 U. S., 628), it was held that railroad companies whose lines were less than fifty miles in length were properly exempted from a police regulation applicable to railroad companies.

In *Postal Telegraph Cable Co. vs. Adams* (155 U. S., 688), a statute imposing a different tax upon telegraph companies operating 1,000 miles or more of wire in the state, from that imposed upon those operating less, was held valid.

In *Dow vs. Beidelman* (125 U. S., 680), rates of charge varying with the length of line of railway, were upheld. It was there said:

> "The legislature, in the exercise of its power of regulating fares and freights, may classify the railroads according to the amount of the business which they have done or appear likely to do. Whether the classification shall be according to the amount of passengers and freight carried, or of gross or net earnings, during a previous year, or according to the simpler and more constant test of the length of the line of the railroad, is a matter within the discretion of the legislature. If the same rule is applied to all railroads of the same class, there is no violation of the constitutional provision securing to all the equal protection of the laws."

In *Engle vs. O'Malley* (219 U. S., 134), a statute which exempted from the requirement that individuals and partnerships engaging in the banking business must obtain a license from the comptroller, those individuals or partnerships where the average amount of each sum received on deposit or for transmission, shall have been not less than $500 during the year, was upheld; the court there saying:

> "It is true, no doubt, that where size is not an index to an admitted evil the law cannot discriminate between the great and small. But in this case size is an index. Where the average amount of each sum received is not less than five hundred dollars we know that we have not before us the class of ignorant and helpless depositors, largely foreign, whom the law seeks to protect." (p. 138.)

(6) The exempted lines are confined to rural communities, they are brought into existence for the purpose of serving and serve, purely the private and mutual interests of their owners, the farmers who own the line, who secure the service over it from another company, who derive no monetary profit and pay no dividends.

In numerous instances classification based upon similar principle has been sustained in cases of taxation. In *American Sugar Refining Co. vs. Louisiana* (179 U. S., 89), planters and farmers grinding and refining their own sugar and molasses, were exempted from the operation of the tax imposed. The court overruled the objection that the act was invalid as being an arbitrary discrimination, saying:

> "The act in question does undoubtedly discriminate in favor of a certain class of refiners, but this discrimination, if founded upon a reasonable distinction in principle, is valid. Of course, if such discrimination were purely arbitrary, oppressive or capricious, and made to depend upon differences of color, race, nativity, religious opinions, political affiliations or other considerations having no possible connection with the duties of citizens as tax payers, such exemption would be pure favoritism, and a denial of the equal protection of the laws, to the less favored classes. But from time out of mind it has been the policy of this government, not only to classify for purposes of taxation, but to exempt producers from the taxation of the methods employed by them to put their products upon the market. The right to sell is clearly an incident to the right to manufacture or produce, and it is at least a question for the legislature to determine whether anything done to prepare a product most per-

fectly for the needs of the market shall not be treated as an incident to its growth or production. The act is not one exempting planters who use their sugar in the manufacture of articles of a wholly different description, such as confectionery, preserves or pastry, or such as one which should exempt the farmer who devoted his corn or rye to the making of whiskey, while other manufacturers of these articles were subjected to a tax. A somewhat different question might arise in such case, since none of these articles are the natural products of the farm—such products only becoming useful by being commingled with other ingredients. Refined sugar, however, is the natural and ultimate product of the cane, and the various steps taken to perfect such product are but incident to the original growth."

In *Cox vs. Texas* (202 U. S., 450-1), producers of wine from grapes grown within the state were held properly exempted from a statute regulating the manufacture and sale of liquors, while in *St. John vs. New York* (201 U. S., 633), different regulations were applied to producing and non-producing vendors of milk.

(7) The farmers' line does no business with others and is in no position to diffuse the tax. If paid by them it will fall directly upon the farmer. On the other hand, the company, which like complainant, is engaged in doing business with the public, is in a position to diffuse the tax so that it will be borne by others. This forms a basis for classification.

In *Cooley on Taxation* (3rd Ed.), 254, it was said:

"A tax on an article of prime necessity, which few produce but all use, may be collected of the producers alone without their feeling the burden beyond what others would feel it, because the tax, in the natural course of business, would be added to the price of the commodity, and would be collected by the producers from the whole community of consumers. Such a tax would be generally distributed, and would be wanting in equality only because of the fact that articles of prime necessity are not consumed by different members of the community in proportion to their means or income, and therefore the poorer classes would pay more than their just proportion. To collect all the revenue of government by a tax on breadstuffs exclusively would consequently be to compel unequal contributions to the support of the government, by means of the necessities of the poor. A tax on

an article which is purely one of luxury would probably be more equal, and certainly less unjust, and would be diffused with some proportion to income; every man would tax himself, and would abstain or indulge as he felt the disposition and ability to pay."

VII.

The complainants are all corporations. The record shows that, with few exceptions, the entire class of taxed companies are corporations, and that, on the other hand, with few exceptions the entire class of exempted lines are not corporations. By fair construction of the act it is limited in operation to corporations. It was originally passed under a constitutional provision permitting the application of that system of taxation to the property of corporations only, and when that act was amended, including the property of telegraph and telephone companies, its provisions were not extended beyond the incorporated company.

The telephone company in Michigan is organized under chapter 177 of the Compiled Laws of 1897; section 8 of that chapter (Sec. 6695 C. L.), provided that as a condition of the organization, taxes should be paid in accordance with a certain statute thus making this statute a part of the charter. By Act 179 of 1899, which substituted another system of taxation and amended the charter in that respect, the method of taxation was changed. By Act 49 of 1909, which also amended the charter by implication, the present system became part of the charter.

By the constitution the power to alter, amend and repeal corporate charters is reserved. So far as corporations are concerned Act 49 of 1909 is valid and constitutional as an exercise of that reserved power, though it does not include in its terms individuals who carry on business of the same character, and although without that reservation the act might be invalid.

Upon this question *Berea College vs. Kentucky* (211 U. S., 54-57), is controlling; it was there said:

> "The Act of 1904 forbids 'any person, corporation or association of persons to maintain or operate any college,' etc. Such a statute may conflict with the Federal Constitution in denying to individuals powers which they may rightfully exercise, and yet, at the same time, be valid as to a corporation created by the state.

It may be said that the Court of Appeals sustained the validity of this section of the statute, both against individuals and corporations. It ruled that the legislation was within the power of the state, and that the state might rightfully thus restrain all individuals, corporations and associations. But it is unnecessary for us to consider anything more than the question of its validity as applied to corporations.

The statute is clearly separable and may be valid as to one class while invalid as to another. Even if it were conceded that its assertion of power over individuals cannot be sustained, still it must be upheld so far as it restrains corporations.

There is no force in the suggestion that the statute, although clearly separable, must stand or fall as an entirety on the ground the legislature would not have enacted one part unless it could reach all. That the legislature of Kentucky desired to separate the teaching of white and colored children may be conceded, but it by no means follows that it would not have enforced the separation so far as it could do so, even though it could not make it effective under all circumstances. In other words, it is not at all unreasonable to believe that the legislature, although advised beforehand of the constitutional question, might have prohibited all organizations and corporations under its control from teaching white and colored children together, and thus made at least uniform official action. The rule of construction in questions of this nature is stated by Chief Justice Shaw in *Warren vs. Mayor of Charlestown*, 2 Gray, 84, quoted approvingly by this court in *Allen vs. Louisiana*, 103 U. S., 80-84.

'But if they are so mutually connected with and dependent on each other, as conditions, considerations or compensations for each other as to warrant a belief that the legislature intended them as a whole, and that if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional or connected, must fall with them.'

See also *Loeb vs. Township Trustees*, 179 U. S., 472, 490, in which this court said:

'As one section of a statute may be repugnant to the constitution without rendering the whole act void, so, one provision of a section may be invalid by reason of its not conforming to the constitution, while all the other provisions may be subject to no constitutional infirmity.

One part may stand while another will fall, unless the two are so connected or dependent on each other in subject-matter meaning or purpose, that the good cannot remain without the bad. The point is, not whether the parts are contained in the same section, for the distribution into sections is purely artificial; but whether they are essentially and inseparably connected in substance—whether the provisions are so interdependent that one cannot operate without the other .'

Further, inasmuch, as the Court of Appeals considered the act separable, and while sustaining it as an entirety gave an independent reason which applies only to corporations, it is obvious that it recognized the force of the suggestions we have made. And when a state statute is so interpreted this court should hesitate before it holds that the Supreme Court of the state did not know what was the thought of the legislature in its enactment. *Missouri, Kansas & Texas Railway vs. McCann*, 174 U. S., 580, 586; *Tullis vs. Lake Erie & Western Railroad*, 175 U. S., 348, 353.

While the terms of the present charter are not given in the record, yet it was admitted on the trial that the defendant was a corporation organized and incorporated under the general statutes of the state of Kentucky, and of course, the state courts, as well as this court on appeal, take judicial notice of those statutes. Further, in the brief of counsel for the defendant is given a history of the incorporation proceedings, together with the charters. From that it appears that Berea College was organized under the authority of an act for the incorporation of voluntary associations, approved March 9, 1854 (2 Stanton Rev. Stat. Ky., 553), which act was amended by an act of March 10, 1856 (2 Stanton, 555), and which in terms reserved to the general assembly 'the right to alter or repeal the charter of any associations formed under the provisions of this act, and the act which this act is an amendment, at any time hereafter.' After the constitution of 1891 was adopted by the state of Kentucky, and on June 10, 1899, the college was reincorporated under the provisions of Chap. 32, Art. 8, Ky. Stat. (Carroll's Ky. Stat., 1903, p. 459), the charter defining its business in these words: 'Its object is the education of all persons who may attend its institution of learning at Berea, and, in the language of the original articles, 'to promote the cause of Christ.' The constitution of 1891 provided in Sec. 3 of the bill of rights that,

'Every grant of a franchise, privilege or exemption shall remain, subject to revocation, alteration or amendment.' Carroll's Ky. Stat. 1903, p. 86. So that the full power of amendment was reserved to the legislature."

The same principle was adjudicated in *St. Louis & Iron Mountain vs. Paul* (173 U. S., 406-8), where a statute as originally passed included both corporations and individuals. It was held unconstitutional so far as applying to individuals, but as to the corporations was sustained as a proper exercise of the right to alter, amend or repeal, the court saying:

"The contention is that as to railroad corporations organized prior to its passage, the act was void because in violation of the Fourteenth Amendment. Corporations are the creations of the state, endowed with such faculties as the state bestows and subject to such conditions as the state imposes and if the power to modify their charters is reserved, that reservation is a part of the contract, and no change within the legitimate exercise of the power can be said to impair its obligations and as this amendment rested on reasons deducted from the peculiar character of the business of the corporations affected and the public nature of their functions, and applied to all alike, the equal protection of the law was not denied. *Missouri Pacific Railway vs. Mackey*, 127 U. S., 205.

The question then is whether the amendment should have been held unauthorized because amounting to a deprivation of property forbidden by the Federal Constitution.

The power to amend 'cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made,' Waite, C. J., *Sinking Fund cases*, 99 U. S., 700, but any alteration or amendment may be made 'that will not defeat or substantially impair the object of the grant, or any rights which have vested under it, and that the legislature may deem necessary to secure either that object or other public or private rights,' Gray J., *Commissioners vs. Holyoke Power Company*, 104 Mass., 446, 451; *Greenwood vs. Freight Co.*, 105 U. S., 13; *Spring Valley Water Works vs. Schottler*, 110 U. S., 347.

This act was purely prospective in its operation. It did not interfere with vested rights, or existing contracts, or destroy, or sensibly encroach upon, the right to contract, although it did impose a duty in reference to the

payment of wages actually earned, which restricted future contracts in the particular named.

In view of the fact that these corporations were clothed with a public trust, and discharged duties of public consequence affecting the community at large, the Supreme Court held the regulation, as promoting the public interest in the protection of employes to the limited extent stated, to be properly within the power to amend reserved under the state constitution.

Inasmuch as the right to contract is not absolute, but may be subjected to the restraints demanded by the safety and welfare of the state, we do not think that conclusion in its application to the power to amend can be disputed on the ground of infraction of the Fourteenth Amendment."

Atchison, Topeka & Santa Fe vs. Matthews, 174 U. S., 104.

VIII.

The cases in which the right to make specific classification has been denied. As applied to taxation the cases of this character are rare. Invalidity, where it exists, is based upon one of three situations.

(1) Where the legislation is in fact class legislation, being directed against particular individuals or institutions. We know of no case where a general tax law falls within this situation. The only authority upon it is that found in the cases of *Cotting vs. Kansas City Stockyards Co.* (183 U. S., 79), and *Connolly vs. United States Sewer Pipe Co.* (184 U. S., 540).

Neither of those cases refer to classification for purposes of taxation; no case can be found where a state taxing statute has been set aside as violating the Fourteenth Amendment, though the power of taxation and exemption has been exercised in such a variety of forms, and under so many different conditions, each of which has been in turn attacked and sustained, that it is practically impossible to present a case not falling within some decided case.

Those cases are both distinguished from the case at bar. In *Connolly vs. United States Sewer Pipe Co.* (184 U. S., 562), the court expressly say, that the rules there applied are not applicable in matters of taxation.

In *Cotting vs. Kansas City Stockyards Co.* (183 U. S., 79), the statute under question involved the arbitrary and oppressive selection of a single stockyards company as the subject of special regulations, penalties, and rates, and the language of the court was limited to that situation. That case has since been held not to apply where questions of taxation were involved. Of it, and of the *Connolly* case, the court in *Cook vs. Marshall County* (196 U. S., 274), said:

> "These cases, however, have but limited application to laws imposing taxes, where the right of classification is held to permit of discrimination between different trades and callings when not obviously exercised in a spirit of prejudice or favoritism."

The language of the Cotting case was further qualified and explained in *St. Louis Consolidated Coal Co. vs. Illinois* (185 U. S., 207), where it said:

> "Another question is whether the act, as amended in 1897, in so far as it discriminates as to penalties imposed upon some persons engaged in the mining business, and not upon others, is a proper exercise of the police power. It is true that the act of 1897 amended the former law of 1895, by limiting its application to coal mines 'where more than five men are employed at any one time.' This is a species of classification which the legislature is at liberty to adopt, provided it be not wholly arbitrary or unreasonable, as it was in *Cotting vs. Kansas City Stock Yards Company*, 183 U. S., 79, in which an act defining what should constitute public stock yards and regulating all charges connected therewith was held to be unconstitutional, because it applied only to one particular company, and not to other companies or corporations engaged in a like business in Kansas, and thereby denied to that company the equal protection of the laws. In the case under consideration there is no attempt arbitrarily to select one mine for inspection, but only to assume that mines which are worked upon so small a scale as to require only five operatives would not be likely to need the careful inspection provided for the larger mines, where the workings were carried on upon a larger scale or a greater depth from the surface, and where a much larger force would be necessary for their successful operation. It is quite evident that a mine which is operated by only five men could scarcely have passed the experimental stage, or that precautions necessary in the operation of coal mines of ordinary magnitude would be required in

such cases. There was clearly reasonable foundation for a discrimination here."

(2) The second reason for invalidity is where, in the classification made, there is no difference between the classes which bears a reasonable relation to the purpose for which made. We know of no case under a general revenue statute which falls under this head.

(3) Where the case falls within some other inhibition of the constitution than that found in the Fourteenth Amendment. There are a number of cases of this character where the Fourteenth Amendment is incidentally mentioned, but where the decision is made dependent upon a violation of the commerce clause, or some other constitutional provision.

APPENDIX II.

Testimony as to value of Exempted Companies.

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There is a great disparity between the figures fixed by the witnesses for complainants, for the value of the exempted property, and those which the several lines in their sworn reports furnished to the State Board. Of the two the values contained in the reports will, upon close examination of the testimony, be found to be the more accurate, for the reasons:

(1) The complainants' witnesses in placing their values, based them upon what they thought lines that would furnish telephone service as farm lines ought to cost, not upon information as to the actual cost of the particular lines, or upon investigation into the value of particular lines. They, aided it is true, by long experience, took a "bird's eye" view of the farm lines of the state without going onto them and without ever having seen but very few of them, and fixed a unit price at so much per station, and, in that way determined the value of properties which they had never seen, and with whose details, cost, condition, depreciation, operating ratio, etc., they were not familiar.

The witness Berry said: In a general way I have estimated the value of these different plants or companies' property by a certain amount per telephone, that being the nearest that I could determine as to the value. (*tr. p.* 100.)

The same witness could not pick out any one line to which the figures he fixed would apply as an average line. He fixed his figures without reference to any particular line or any particular exchange, or specific property. (*tr. pp.* 108-109.)

(*a*) These witnesses did not, for the purpose of fixing values, investigate the specific lines valued, or know, the specific costs or details surrounding them, or their present condition, and had never been completely over any one of the lines valued, and had never been upon, or seen in part, more than a very few of the lines valued.

Thus, the witness Berry, whose testimony applied to the greater number, said: I would not say that I have inspected or been over the entire line of any of the exempted companies. I don't know whether I have or not. (*tr. p.* 109.) The wit-

ness afterward testified that he had been over part of the construction of several lines, none of which are roadways, but did not know, whether they were like the others or not, of his own knowledge. (*tr. p.* 111.)

The witness Tarte had made no inspection of the properties for the purpose of valuation; he had been over parts of some lines a couple of years ago. (*tr. pp.* 115-116.)

This witness didn't know the specific conditions, except as obtained from his company's agents (*tr. p.* 115), and his valuations were based upon conditions in the vicinity of Hastings, where the testimony showed the lines were "first-class rural line construction." (*tr. pp.* 116, 124.)

The witness Melchers had probably been over more of the lines which he sought to value than had the other witnesses. He stated: In a number of places I have seen the lines by driving through the country and have observed them as to their character of construction. (*tr. p.* 117.) But even he made no investigation for the purpose of placing values, but based his testimony largely upon general information. The witness could not tell whether he had ever been over the entire property of any one of the lines. (*tr. p.* 120.)

The witness Melchers' testimony was based upon conditions around Alma, where the condition of rural telephone lines is good, for the class. (*tr. p.* 125.)

(*b*) These witnesses didn't know the extent of depreciation, made no investigation to determine it, and didn't fix or deduct any percentage as representing it. (*tr. pp.* 111, 116, 120, 189, 190.)

The witness Berry stated, it would be difficult for a man in his position to say what the ratio of depreciation would be. (*tr. p.* 190.)

These witnesses stated that the depreciation was taken into consideration through the fixing of a low value per unit. Had a sufficiently low valuation per unit been fixed it might have taken care of the depreciation, but the fact is as will be seen later, that the witnesses did not fix a low value per unit, but fixed prices at which fair farmers' lines could be constructed new.

Without reference to the specific testimony we may say that the entire record bears out the fact that these farm lines were constructed very cheaply, in fact as cheaply as possible, of materials which readily and rapidly depreciate, and that no effort was made to keep them maintained; the depreciation was rapid and the lines throughout the state were much depreciated. We refer to but a few of the many references to the condition of the farm lines shown in the record.

Mr. Tarte, complainants' witness, when asked about the condition of rural lines in the southern and southeastern part of the state, where the great bulk of them lie, stated, I am under the impression that a great many of these lines down in there are not very good. (*tr. p.* 124.)

The witness Blum, with regard to the Brooklyn and Wampler's Lake Tel. Co., one of a large number of lines running into the Brooklyn Swb., testified to their poor construction, maintenance and condition. (*tr. p.* 149, *et seq.*)

The witness Lawrence testified that the Brooklyn and Wampler's Lake line was the best one running into the Brooklyn Swb. (*tr. p.* 149), but that, even granting this, all the lines around Brooklyn were in a generally poor condition. (*tr. p.* 150). (*See also tr. pp.* 152, 153, 157, 158, 160, 163, 165, 170.) Two witnesses of complainants, who made a detailed examination of rural lines, also testified to poor construction and a high ratio of depreciation. (*tr. pp.* 194, *et seq.*)

(*c*) These witnesses' figures were all upon the basis of cost of construction, at a fixed price per unit; they were based upon the estimate of two phones or stations to the mile of pole line. (*tr. pp.* 122, 197.) The testimony shows that a large number of farm lines use more or less contact on the poles of other companies. In fact, there was specific investigation of few companies where this situation was not shown. (*See tr. pp.* 146, 153, 154, 156, 161, 165, 167, 168, 169, 170, 173, 175, 187, 188.)

The witness McCormick stated, "I find it quite general with these smaller companies to make contacts with other companies' poles." (*tr. p.* 175.)

This renting of contacts which is very common and dispenses with the building of pole lines, was not shown to have been taken into consideration at all in fixing the unit price, except that Mr. Berry stated that he thought his low valuation would cover it. (*tr. pp.* 187-188.) That his valuation would not cover it is apparent from the fact that his figures were practically the same as those testified to by other witnesses for new construction.

(*d*) The values of the complainants' witnesses were not based upon earnings, or income producing or sale value of the property. (*tr. pp.* 111, 115-116, 117, 120.) They were based solely upon the cost of construction.

That for the purpose of taxation, value with reference to income and earning ability or sale value, is the only proper method, is evident.

(*e*) The complainants' valuations all depend upon an average of two phones to the mile. Two-thirds of the cost of

a telephone line is in the pole line (*tr. p.* 122), and if there were three telephones to the mile or more, the cost would be reduced proportionately. In one district where there were a large number of telephones it was apparent that there were at least five to the mile (*tr. p.* 197); at another place it was apparent that there were eleven to the mile (*tr. p.* 194); at another, four to the mile (*tr. p.* 156); at another, four to the mile (*tr. p.* 157); at another, three (*tr. p.* 159); at others; two (*tr. p.* 162); three (*tr. p.* 168); almost three (*tr. p.* 169); three (*tr. p.* 171); less than two (*tr. p.* 172); almost four (*tr. p.* 175); three (*tr. p.* 191); two (*tr. p.* 191); less than two (*tr. p.* 191).

(2) The value of $20 and $30 per station, allowing two stations to the mile, is not borne out by the evidence of complainants' other witnesses. The testimony of complainants' other witnesses is to the effect that these prices would construct new lines of the character found on roadways. While the lines, which were being valued at those units, were not new, but very much depreciated.

The witness Hurson (*tr. p.* 195), testified that the roadway lines which he inspected could be constructed for a figure ranging from $40 to $50 a mile.

The witness Francis (*tr. p.* 197), testified that this class of construction could be built for $35 to $40 a mile.

The witness McQuaid (*tr. pp.* 197, 198), testified that lines of this character with metallic circuits, which cost more than the grounded lines used in many instances on roadways (*tr. pp.* 194, 197), could be constructed from $40 to $45 per mile.

The witness Miller (*tr. pp.* 201-202), testified to the actual construction of the best line out of Lapeer at $42 per mile.

(3) The value of $20 and $30 per mile, allowing two stations to the mile, is directly contrary to the great majority of figures in the 435 sworn reports, as well as to the testimony of the defendant's witnesses, familiar with local conditions.

The witness Turner (*tr. p.* 166), testified that the Coldwater Roadway was constructed at $17.70 per mile(including as he was told, everything); that on the Town Line Roadway (part contacts) the cost of material was $14 per mile. Adding to this the highest cost stated by complainants' witnesses for labor, $18 (*tr. p.* 195), would make but $32 per mile, or at the lowest cost, $12 (*tr. p.* 195), would make but $26 per mile.

The witness Robinson, a practical telephone man, said some of the lines could be built for $25 per mile. (*tr. p.* 165.)

The witness Boss (*tr. pp.* 168-169), testified to the construction of the White River Farm Line, 5 miles with 13 subscribers, at $12.45 per member or $32.37 per mile.

The testimony throughout the record shows that the purpose of the farmers in constructing farm lines was to get cheap telephone rental, that their construction was as cheap as possible; that in all instances where practicable they ran on contacts with other companies' poles; that in other instances they used scantling nailed to fence posts (*tr. pp.* 153, 196); that in other instances they used the cheapest of native timber, taken out of the woods adjacent to the line; that where poles were purchased they cost from 20 to 50 cents each; that cheap grades of wire and other material were used; that the lines were poorly constructed in the cheapest manner possible, and that many of the lines were crude indeed.

There is much testimony in the record to establish the general practice of poor construction and as it is impossible to refer to it all in detail, but a few specific references will be made.

The witness Blum, familiar with conditions around Brooklyn where there were about 600 rural telephones, testified that these lines are constructed and maintained as cheaply as possible (*tr. p.* 148), and that they are badly depreciated. (*tr. pp.* 147-148.)

The witness Lawrence also stated the construction to be very poor, and that the maintenance was not attended to. (*tr. pp.* 150-151.)

The witness Porter stated that the idea was to get up their lines as cheaply as possible and that the lines were very poorly maintained and only repaired when absolutely necessary (*tr. pp.* 152-153).

The witness McCormick stated that the controlling element was cheapness, and that they built their lines as cheaply as possible, using native poles and cheap wire, and that the maintenance was not closely kept up (*tr. p.* 155); to the same effect is his testimony with regard to specific companies. (*tr. pp.* 156-157.)

It is unnecessary to review further the testimony with regard to poor and cheap construction, it being evidently admitted by complainants, as their own witnesses testify to it. See testimony of witness Hurson (*tr. pp.* 194-195), and witness Francis (*tr. pp.* 196-197.)

The prevailing idea of cheapness results in a great variation in prices as well as in cost, and value. It would therefore be exceedingly difficult to state a unit price to cover all the rural construction in the state, and such price if fixed

which gave due effect to the depreciation which actually exists, would necessarily be a very low one and much below the figure fixed by complainants' witnesses, who fixed $20 and $30 per station as their figures approximate the cost of new construction given by their other witnesses.

The complainants' witnesses admitted that there might be a variation of 50 per cent between the best and poorest of lines. (*tr. pp.* 109, 116.)

The witness Porter, a practical telephone man, who had spent about six months investigating telephone properties, stated that the variation would be greater than that, sometimes much greater—"twenty times"— as the poorest line would be very poor indeed. (*tr. p.* 155.)

The witness McCormick testified, that some of the lines on roadways would have cost four or six times more than others. (*tr. p.* 156.)

(4) The complainants' witnesses fixed a unit price upon telephones of $10 per station throughout the lines valued, although very few telephones should have been included, as many of them are owned by the M. S. T. or some other taxed company, while a great many, if not the majority, of those not thus owned are owned by the farmers individually, each purchasing his own instrument. (*tr. pp.* 124, 147, 148, 150, 153, 156.) Excluding the telephones, not owned by the associations exempted, would reduce the value of the lines from one-quarter to one-third of the total figures given.

The telephones which did belong to the associations were valued at an excessive figure when $10 per station was fixed. Mr. Berry testified that telephones of good grade could be purchased new at $10, or the best grade at $11, running down to between $7 and $8, and that they could be installed at from $1 to $3 per station (*tr. pp.* 122-123); while the witness McQuaid testified that telephones sufficient for farm line purposes could be purchased for $8 or $9 per set (*tr. p.* 198.)

(5) In each of the sworn reports made by the lines to the state board of assessors a single property is dealt with. The report is by officers familiar with the construction, its cost and the surrounding conditions. Under the circumstances above set forth, is there sufficient evidence that $20 or $30 per station was a fair price when it is the testimony of men not familiar with the conditions? We do not believe that the court is going to say that all of these officers making these reports were guilty of perjury upon any such proof as to con-

ditions and cost. Unquestionably, the specific statements of these officers of companies in their sworn reports as to their individual properties, is entitled to greater credence than are the general values thus given.

No proof of any character has been introduced to dispute any particular report (except in one instance), or to dispute the reports generally or to show that the persons reported the property at less than its value, other than the general conclusions drawn by these witnesses who did not see the property, know its percentage of depreciation or the extent to which contacts were used.

(6) The state board of assessors made a detailed inventory of the large number of properties assessed. The assessments which that board made based upon that inventory ran lower than the values which were placed in the sworn reports filed with it, where the companies did not have in their hands M. S. T. property. (*tr. p.* 142.)

APPENDIX III.

Statement of detail as to exempted telephone lines: showing them, with small exception, to be of different character from complainants and to be co-operative and non-profit making.

Name.	From complainants' witnesses.									From annual reports, June 30, 1909.—Ex. "B."			From supplemental reports. pp. 128-138, 190.	
	Mutual roadway	Transcript page	Farmers' mutuals or rurals composed of mutual companies	Transcript page	Sub-licensees	Transcript page	For profit other than cheaper rental of telephones or manager's income	Transcript page	Estimated cost of property	Cost of property	Gross receipts	Expenses	Organized for profit. No.	Organized for profit. Yes.
Adair Roadway Co., Adair	Yes	69					No	85		$84 21	$135 82	$184 42	No	
Aetna Telephone Co., Morley	Yes	88					No	91	$482 00		162 00	161 00	No	
Algansee Central Tel. Co., Ltd., Algansee									*496 00	496 00	384 00	380 00	No	
1Amble Tel. Co., Amble				87			Yes	90	438 00	438 00	40 57			Yes.
Angerer, Chas., Scofield			Yes	69			No	85	1,120 00		147 00			
Arcada Farmers Mutual, Alma	Yes	69					No	85					No	
Arcadia Tel. Co., Lapeer	Yes	69					No	85		400 00			No	
Arenac, Ogemaw & Iosco Tel., Twining No. 2; Prin. Office, Prescott									*680 00	680 00	30 00	80 00	No	
2Ashley Home Tel. Co., Ashley					Yes	68			1,350 00					
Ashley Rural Tel. Co., Ashley	Yes	95					No	99	270 00			25 00	No	
Alaiedon & Mason Tel. Co., Mason	Yes	69					No	85					No	
Allen, Arthur (Bendon rural)				69										
Baldwin, M. D., Port Huron	Yes	69					No	85		387 40	330 00	275 00	No	
Baltimore Centre Tel., Hastings R.F.D. No.	Yes	88					No	91	360 00	120 00		78 48	No	
Bammell Roadway Co., Marine City	Yes	69					No	85				11 00	No	
Bannister Mutual Tel. Co., Bannister	Yes	95					No	99	510 00	129 43	32 00	29 43	No	
Bar Lake Roadway Tel. Co., Manistee R. F. D.	Yes	69					No	85		90 00	15 00	60 00	No	
Barryton Rural Tel. Co., Barryton	Yes	95					No	99	720 00	226 00		36 00	No	
Bassett Roadway Co., Lapeer	Yes	69					No	85		88 38		12 00	No	
Belle River Mills Tel., Marine City	Yes	69					No	85					No	

Belle River Roadway Co., St. Clair	Yes	69					No	85								
Bendon Rural (Arthur Allen) Bendon			Yes	69			No	85	940 00	360 00	252 00	252 00	No			
4Berrien County Home Tel. Co., Galien													No			
Bethany Tel. Co., St. Louis	Yes	69														Yes.
Big Four Tel. Co., Manistee							No	85								
							No		*258 00	58 92	355 24	339 16	No			
Big Hand Road Tel. Co., St. Clair	Yes	69								258 00	28 00	16 00	No			
Big Prairie & Everett, White Cloud	Yes	89					No	85								
Big Rapids & Grant, Paris	Yes	69					No	91	1,117 30	196 50		196 50	No			
Big Rapids, Lilley & Bitely Tel. Co., Big Rapids							No	85		500 00		25 00	No			
	Yes	69										245 00	No			
Black Creek Farmers' Tel. Co., Harvard	Yes	89					No	85		561 58	10 40					
							No	91	180 00	95 00	3 00	3 00	No			
Bluff Creek Tel. Co., Coleman	Yes	95														
Blackmore & Sammons, Leslie							No	99	210 00	251 25		143 75	No			
Bowman Roadway Co., St. Clair, R. F. D. 3							No	85	*150 00	150 00			No			
	Yes	69														
Boyce, A. A., Bay City	Yes	69								336 50		172 51	No			
Bradford Roadway Co., Lapeer	Yes	69					No	85		300 00			No			
							No	85		173 91			No			
5Bridgman Tel. Co., Bridgman																
Bridgewater Centre Tel. Co., Clinton	Yes	69			Yes	68			983 00	600 00	400 00	450 00				
aBrooklyn & Clark Lake Tel. Co., Brooklyn							No	85		250 00	234 00	229 05	No			
aBrooklyn & S. Norvell Tel. Co., Brooklyn												10 00	No			
6Brooklyn Switchboard Assn., Brooklyn					Yes	68										
Broomfield Tel. Co. (C. D. Brown), Millbrook									12,000 00	250 00	65 00	65 00	No			
7Bryan Tel. Co., Bryan, Ohio			Yes	69			No	85	1,640 00		20 00	10 00	No			
Buckeye Tel. Co., Alanson									*340 00	340 00	186 65	25 00				Yes.
Budge, W. M., Tustin									*50 00	50 00	34 34	350 00	No			
bBunker Hill Tel. Ex., Leslie			Yes	69			No	85	600 00				No			
											71 50	62 00	No			
bBurnett, S. S., Lake Ann																
8Burr Oak Mutual Tel. Co., Burr Oak					Yes	102			2,265 00	2,143 33	26 00	90 00	No			
Busy Bee Tel Co., Munith									*7 25	7 25		25 00	No			
Brown, Chas. D. (Broomfield Tel. Co.)				69									No			
Briggs, Lester (Winn Rural)				69												
3Bates, M. A. (Grayling City Tel.)						68										
aCambridge & Woodstock Tel. Co., Brooklyn																
aCambridge Junction Tel. Co., Brooklyn																
Campbell Bros., Cloverdale			Yes	69			No	85	2,800 00	5 00	21 00	14 90	No			
9Carr Telephone Co., Branch									*550 00	550 00	472 59	18 00	No			
												267 00	No			
												25 00	Yes f.			

Name.	From complainants' witnesses.									From annual reports, June 30, 1909.—Ex. "B."			From supplemental reports. pp. 128-138, 190.	
	Mutual roadway	Transcript page	Farmers' mutuals or rurals composed of mutual companies	Transcript page	Sub-licensees	Transcript page	For profit other than cheaper rental of telephones or manager's income	Transcript page	Estimated cost of property	Cost of property	Gross receipts	Expenses	Organized for profit. No.	Organized for profit. Yes.
Cavanaugh Lake Rural Tel. Co., Chelsea	Yes....	70	.....	.....	.....	.....	No....	85	.....	$176 00	.....	$24 00	No.....	.....
Cedar Valley Telephone Co., Winn	Yes....	95	.....	.....	.....	.....	No....	99	$150 00	97 00	.....	.....	No.....	.....
Center Road Telephone Co., Hastings	Yes....	89	.....	.....	.....	.....	No....	91	251 12	251 12	$54 15	54 15	No.....	.....
Ceresco Telephone Co., Ceresco	Yes....	70	.....	.....	.....	.....	No....	85	.....	900 00	120 00	120 00	No.....	.....
Chelsea & Francisco Tel. Co., Chelsea	Yes....	70	.....	.....	.....	.....	No....	85	.....	.....	5 00	130 00	No.....	.....
Cheney Roadway Co., Scotts	Yes....	70	.....	.....	.....	.....	No....	85	.....	.....	.....	.....	No.....	.....
China Roadway Co., St. Clair	Yes....	70	.....	.....	.....	.....	No....	85	.....	192 00	.....	.....	No.....	.....
China-St. Clair Tel. Co., St. Clair	Yes....	70	.....	.....	.....	.....	No....	85	.....	49 30	62 64	62 64	No.....	.....
Chippewa Lake Tel. Co., Rodney	.....	.....	.....	.....	.....	.....	.....	.....	1,040 00	207 88	240 00	.....	No.....	.....
Chippewa Rural Tel. Co., Barryton	.....	.....	Yes....	95	.....	.....	No....	99	330 00	.....	49 00	49 00	No.....	.....
bCitizens Mutual Tel. Co., of Vantown, Vantown	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	258 00	334 33	No.....	.....
11Citizens Tel. Co. of Alcona, Harrisville	.....	.....	.....	.....	Yes....	68	Yes...	108	2,355 00	.....	29 05	62 24	Yes f..	.....
12Citizens Tel. Co. of Berrien, New Troy	.....	.....	.....	.....	Yes....	68	.....	.....	2,300 00	1,210 00	414 00	196 00	No.....	.....
Clam Union Tel. Co., McBain	Yes....	90	.....	.....	.....	.....	No....	91	800 00	328 05	2 00	1 50	No.....	.....
Clark, Jas. H., New Lothrop	.....	.....	Yes....	69	.....	.....	No....	85	360 00	5 00	20 00	.....	No.....	.....
Clam Lake Rural Tel. Co., Cadillac	Yes....	90	.....	.....	.....	.....	No....	91	*200 00	200 00	.....	300 00	No.....	.....
Clark Roadway Co., Adair	Yes....	70	.....	.....	.....	.....	No....	85	.....	182 00	12 00	7 20	No.....	.....
49Clayton, Sand Creek, Bimo Co. (Seneca Exchange), Seneca	.....	.....	.....	.....	Yes...	68	.....	.....	2,700 00	40 00	15 00	3 11	No.....	.....
bCleveland Valley Tel. Co., Maple City	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	No.....	.....
Clifford Lake Independent Tel. Co., Stanton	Yes....	95	.....	.....	.....	.....	No....	99	340 00	.....	.....	.....	No.....	.....

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cClinton & Shiawassee Rural, Laingsburg									800 00	142 00	200 00	No	
Clinton Independent Tel. Co., Clinton									64 00	42 50	42 50		
Coe, T. D., Romeo				103			2,140 00		484 50	420 00	192 00	No	
Coldwater Roadway Tel. Co., Flushing	Yes	70			No	85			85 04			No	
Coldwater Rural No. 1, Tel., Barryton	Yes	95			No	99	300 00					No	
Coldwater Tel. Co., LeRoy	Yes	89			No	91	240 00		64 00			No	
Colfax Tel. Co., Big Rapids	Yes	70			No	85			95 00			No	
Colfax Tel. Co., No. 2, Big Rapids	Yes	70			No	85			27 00		98 73	No	
Colonville Roadway Co., Clare	Yes	70			No	85			59 90			No	
Conklin, F. J., East Gilead			Yes	69	No	85	1,200 00			259 00	45 00		
Conway Antrim Tel. Co., Byron							*5 00		*5 00	100 00	90 00	No	
Cork, W. H., Cedar				69	No	85	1,860 00		630 00	300 00	225 00	No	
County Center Tel. Co., Hastings	Yes	88			No	91	146 00		146 00	15 00	114 75	No	
Cowing Line, Henrietta	Yes	70			No	85						No	
Crawford Co. Farmers Tel. Co., Grayling							*1,850 00		1,850 00	238 00	75 00		Yes e
Crosby Tel. Co., Muskegon							*620 00		620 00			No	
Crystal Lake Farmers Mutual Tel. Co., Frankfort	Yes	70			No	85			175 80			No	
13Crystal Tel. Co., Crystal			Yes M	99	No	94-99	3,000 00		200 00	231 19	234 00	No	
Curtisville Telephone Co., Lapeer	Yes	70			No	85			408 56		547 05	No	
Curtisville Tel. Co., Barryton	Yes	95			No	99	360 00		226 00			No	
Custer Peach Belt, Scottville	Yes	70			No	85			123 29	4 50	7 00	No	
Custer Tel. Co	Yes	70			No	85			79 00	133 92	133 92	No	
Cyclone Tel. Co., Morley	Yes	88			No	91	135 00		135 00			No	
Daggett, Nathan Faithorn Tel. Co., Daggett	Yes	70			No	85			968 52	367 30	196 40		
Deerfield Rural Tel. Co., Morley	Yes	88			No	91	140 00		200 00	20 00	35 00	No	
Densmore, E. F., Maple City			Yes	69	No	85	485 00		80 00	40 00	45 00		
Dewing Telephone, LeRoy	Yes	89			No	91	200 00		175 00			No	
Diamond Lake Tel. Co., Ramona	Yes	89			No	91	*237 27		237 27			No	
15Drenthe Independent Tel. Co., Zeeland No. 3			Yes M	91	No	91	*1,390 56		1,390 56	8 00	18 00	No	
East Alaiedon Tel. Co., Mason							*161 25		161 25	12 00	1 50	No	
East Bethany Tel. Co., Breckenridge	Yes	96			No	99	140 00			25 00	25 00		
East Elmira Tel. Co., Gaylord							*1,500 55		1,500 55	205 61	179 09	No	
East Ferris Union Tel. Co., Vestaburg	Yes	96			No	99	600 00		840 00	5 40	51 05	No	
East Freesoil Tel. Co., Freesoil	Yes	70			No	85			104 19	2 50	85	No	
East Gilmore Roadway Co., Farwell	Yes	70			No	85			75 00			No	

Name.	From complainants' witnesses.									From annual reports, June 30, 1909.—Ex. "B."			From supplemental reports. pp. 128-138, 190.	
	Mutual roadway	Transcript page	Farmers' mutuals or rurals composed of mutual companies	Transcript page	Sub-licensees	Transcript page	For profit other than cheaper rental of telephones or manager's income	Transcript page	Estimated cost of property	Cost of property	Gross receipts	Expenses	Organized for profit. No.	Organized for profit. Yes.
East Hope & West Baltimore, Hastings	Yes....	89					No.....	91	$390 00				No.....	
East Irving & Hastings, Hastings	Yes....	88					No.....	91	300 00	$280 00	$55 50	$55 50	No.....	
East Paradise Tel. Assn., Kingsley, R. F. D. No. 2	Yes....	90					No.....	91	*614 80	614 80			No.....	
16East Saugatuck Tel. Co., Holland, R. F. D. No. 8			Yes F.M	91			No.....	91	*1,472 16	1,472 16	435 65	606 81	No.....	
17East Shore Tel. Co., Lakeside					Yes...	68	Yes..	110	1,064 00	1,200 00	275 00	220 00		Yes.
East Town Line, Lapeer	Yes....	70					No.....	85		218 26		4 11	No.....	
Eastwood Roadway Co., Eastwood	Yes....	70					No.....	85		150 00		150 00	No.....	
Eaton Rapids & West Aurelius Tel. Co., Eaton Rapids									*300 00	300 00	12 00	22 00	No.....	
Eby, Christian, Alba			Yes....	69			No.....	85	1,280 00	53 27		25 35	No.....	
Eddy, Ed., Clinton Rural No. 3, Clinton	Yes....	70					No.....	85			50 00	50 00	No.....	
Eden Tel. Co., Scottville R. F. D. No. 2	Yes....	70					No.....	85		172 50	261 25	261 25	No.....	
Edenville Tel. Co., Edenville	Yes....	96					No.....	99	*192 00	192 00				
Edwards, Jno. T., Belleville			Yes...	69			No.....	85	1,575 00	180 00	384 50		No.....	
Elba Center Tel. Co., Lapeer	Yes....	70					No.....	85		109 17		134 20	No.....	
Elba Tel. Co., Lapeer	Yes....	70					No.....	85				132 00	No.....	
Ellsworth Telephone, Luther	Yes....	89						91	600 00	130 00	180 00	180 00	No.....	
Elm Grove Tel. Co., Lapeer	Yes....	70					No.....	85		140 53			No.....	
Empire Rural Tel. Co. (J. S. Horen), Empire			Yes....	69			No.....	85	1,480 00	793 00	50 00		No.....	
Enterprise Tel. Co., Coleman	Yes....	96					No.....	99	420 00	160 00			No.....	
Etchell & Mason Tel. Co., No. 2, Leslie R. F. D. No. 3	Yes....	70					No.....	85		70 00		15 00	No.....	
Etchell & Mason Tel. Co., No. 1, Mason	Yes....	70					No.....	85		70 00		15 00	No.....	

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Eureka Tel. Co., Remus	Yes....	95									No.....	99	*374 78	374 78					No.....					
Evart & Emerald Tel. Co., Evart R. F. D. No. 1	Yes....	88									No.....	91	560 00	3 00			10 00		No.....					
Evart & Muskegon Valley Tel. Co., Evart	Yes....	88									No.....	91	580 00	300 00			8 00		No.....					
Evart Centerline Tel. Co., Evart	Yes....	88									No.....	91	740 00	58 32	77 00		90 67		No.....					
bEverette Centre Tel. Co., Newaygo	Yes....	89									No.....	91		36 00					No.....					
Fairview Roadway, Hunters Creek	Yes....	70									No.....	85							No.....					
Fall Creek Tel. Co., Hastings R. F. D. No. 8	Yes....	88									No.....	91	240 00	225 80			43 16		No.....					
Farmers Independent Tel. Co., Trufant	Yes....	89									No.....	91	220 00	165 00			1 50		No.....					
18Farmers Independent Tel. Co., Deckerville							Yes....	102					*1,500 00	1,500 00	360 00		360 00		No.....					
Farmers Mutual Tel. Co., of Bannister, Bannister	Yes....	70									No.....	85		76 63	2 00		2 00		No.....					
Farmers Mutual Tel. Co. of Chapin, Chapin	Yes....	70									No.....	85		718 50			39 40		No.....					
Farmers Mutual Tel. Co. of Grand Traverse Co. (Adam Seegmiller), Summit City			Yes....	69							No.....	85	2,790 00	1,982 22	122 00		99 43		No.....					
Farmers Mutual Tel. Co. of Robinson, Grand Haven	Yes....	70									No.....	85		843 17	15 50		22 32		No.....					
Farmers Mutual Tel. Co. of Sandstone, Parma R. F. D. No. 1													*400 00	400 00	28 00		28 00		No.....					
Farmers Tel. Co., Big Rapids R. F. D. No. 1													*107 74	107 74			68		No.....					
Farmers Union Mutual Co. of Twp. of Baltimore, Quimby R. F. D. No. 1	Yes....	89									No.....	91	*376 25	376 25	67 44		67 44		No.....					
Farmers Union Tel. Co., Manton	Yes....	89									No.....	91	200 00	200 00			200 00		No.....					
Farmers Union Tel. Co., Morrice													*87 00	87 00	66 25		69 06		No.....					
Fitchburg Tel. Co., Stockbridge R. F. D. No. 3													*380 00	380 00	350 00		350 00		No.....					
Five Points Tel. Co., Holly R. F. D. No. 2	Yes....	70									No.....	85		50 00			12 00		No.....					
Flint River Tel. Co., Lapeer	Yes....	70									No.....	85		60 00	184 00		184 00		No.....					
Forest Home Tel. Co., Lapeer	Yes....	70									No.....	85							No.....					
bFremont Northwestern, Fremont R. F. D. No. 8																			No.....					
dFrontier Rural Exchange, Frontier																			No.....					
19Fulton Mutual, Pompeii																			No.....					
Gaswell Roadway Tel., Marine City	Yes....	70					Yes....	68			No.....	110	585 00				70 00		No.....					
											No.....	85		150 00			5 00		No.....					

Name.	From complainants' witnesses.								From annual reports, June 30, 1909.—Ex. "B."			From supplemental reports. pp. 128-138, 190.	
	Mutual roadway	Transcript page	Farmers' mutuals or rurals composed of mutual companies	Transcript page	Sub-licensees	Transcript page	For profit other than cheaper rental of telephones or manager's income	Transcript page	Estimated cost of property	Cost of property	Gross receipts	Expenses	Organized for profit. No.	Organized for profit. Yes.
Genesee Roadway Co., Saginaw R. F. D. No. 6	Yes....	70	.....	.....	.....	.....	No.....	85	.....	110 31	24 38	124 69	No.....	.....
Gilbert Tel. Co., Manton	Yes....	89	.....	.....	.....	.....	No.....	91	350 00	350 00	231 00	231 00	.....	.....
Gilhouse & Zorn, Manchester	.....	.....	Yes...	69	.....	.....	No.....	85	$1,660 00	$184 00	$246 00	$246 00	No.....	.....
Gilmore Rural Tel., Farwell	Yes....	96	.....	.....	.....	.....	No.....	99	680 00	400 00	40 00	10 00	No.....	.....
Gladwin & Nolan Tel. Co., Gladwin	Yes....	70	.....	.....	.....	.....	No.....	85	.....	900 00	255 40	261 00	.....	.....
Gladwin County Tel. Co., Gladwin	Yes....	70	.....	.....	.....	.....	No.....	85	.....	1,967 87	410 00	381 00	No.....	.....
Gladwin Road Tel. Co., Coleman	Yes....	96	.....	.....	.....	.....	No.....	99	240 00	56 00	.....	.....	No.....	.....
Gleaner Tel. Line, Evart	Yes....	88	.....	.....	.....	.....	No.....	91	160 00	.....	.....	.....	No.....	.....
20Gobleville Farmers Mut. Tel. Co., Gobleville	.....	.....	Yes F.M	91	.....	.....	No.....	91	1,335 75	1,333 75	450 00	283 14	No.....	.....
Goodwell Tel. Co., Woodville	Yes....	89	.....	.....	.....	.....	No.....	91	.....	616 75	.....	49 80	No.....	.....
Grand River Valley, Eaton Rapids	Yes....	70	.....	.....	.....	.....	No.....	85	.....	360 00	.....	.....	No.....	.....
Grass Lake & No. Sharon, Grass Lake	.....	.....	.....	.....	.....	.....	.....	.....	*5 00	5 00	.....	5 00	No.....	.....
Gratiot Roadway, Richmond	Yes....	70	.....	.....	.....	.....	No.....	85	.....	135 35	.....	.....	No.....	.....
Green Oak Tel. Co., Lapeer	Yes....	70	.....	.....	.....	.....	No.....	85	.....	28 00	7 50	28 00	No.....	.....
Greenwood Mutual Tel. Co., Harrison	Yes....	96	.....	.....	.....	.....	No.....	99	810 00	360 00	8 00	7 00	No.....	.....
Groveland Grange, Holly, R. F. D. No. 1	Yes....	70	.....	.....	.....	.....	No.....	85	.....	.....	.....	.....	No.....	.....
Gun Plains Roadway Co., Plainwell	Yes....	70	.....	.....	.....	.....	No.....	85	.....	216 00	55 00	.....	No.....	.....
Guetler Roadway Co., Marine City	Yes....	70	.....	.....	.....	.....	No.....	85	.....	72 00	.....	.....	No.....	.....
Grayling City Tel. Co. (M. A. Bates)	.....	.....	.....	.....	Yes...	68	Yes..	109	4,060 00	.....	.....	.....	.....	.....
Gowing, J. Angus (A. J. Locke)	.....	.....	.....	69	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Hastings & Carlton Co-operative Co., Hastings, R. F. D. No. 5	Yes....	88	.....	.....	.....	.....	.....	.....	391 50	391 50	233 50	252 50	No.....	.....
Hayes & Elmira Tel. Co., Gaylord	.....	.....	.....	.....	.....	.....	.....	.....	*728 00	728 00	45 00	15 00	No.....	.....

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21Hempstead, S. A., Laingsburg					Yes....	68			2,010 00	400 00	392 00	200 60				
bHenrietta Central, Munith, R.F.D.No.3												18 00	No....			
bHenrietta Farmers Tel. Co., Munith													No....			
Herrick Roadway, Clare	Yes....	71					No.....	85		158 00			No....			
Herring Lake Tel. Co., South Frankfort									*369 62	369 62	345 45	328 06	No....			
High St. Tel. Co., Hastings	Yes....	88					No.....	91	270 00	225 00	50 00	50 00	No....			
22Hills Rural Tel. Co., Au Gres					Yes....	68	Yes...	110	981 00	583 00	230 50	215 75			Yes.	
Hinton Mutual Tel. Co., Lakeview	Yes....	96					No.....	99	1,200 00	619 00		50 00	No....			
Hitchcock Roadway Tel. Co., Scotts	Yes....	71					No.....	85					No....			
Hoadley, R. P., Three Oak	Yes....	71					No.....	85					No....			
23Holloway Tel. Co., Holloway					Yes....	102			1,200 00		489 07	427 07	No....			
Holly Centre Tel. Co., Holly	Yes....	70					No.....	85		50 00			No....			
Hope Improvement Tel. Co., Hope									1,350 00	200 75		160 45	No....			
Horton Bay Roadway, Horton Bay	Yes....	71					No.....	85		153 10			No....			
Horton Mutual Tel. Co., Horton									*125 00	125 00	125 00	125 00	No....			
24Houghton Lake Tel. Co., Houghton Lake							Yes...	92	713 43	713 43	137 56	125 85	No....			
Hunters Creek Tel. Co., Hunters Creek	Yes....	71					No.....	85		73 66			No....			
Husel, Chas. Z., St. Clair	Yes....	71					No.....	85		16 00	4 00		No....			
Horen, J. S. (Empire Rural)				69												
Ingersoll Rural Tel. Co., Midland, R. F. D. No. 7	Yes....	96					No.....	99	1,300 00		13 60	3 00	No....			
Ironwood Rural Tel. Co., Ironwood	Yes....	71					No.....	85		655 00	515 00	655 00	No....			
Irving Tel. Co., Irving	Yes....	88					No.....	91	360 00		32 50	32 50	No....			
James, Henry F. (part owner) Waterford Chamber of Commerce, Detroit									*100 00	100 00	25 00	25 00	No....			
Jasper Tel. Co., St. Louis	Yes....	96					No.....	99	966 00	966 00			No....			
Junior Tel. Co., Okemos									*261 80	261 80	54 06	48 84	No....			
25Kalamazoo Home Tel. Co., Kalamazoo									*350 00	350 00					Yes.	
Kalkaska County Tel. Co., So. Boardman																
King Roadway Tel. Co., St. Clair	Yes....	71							*1,950 64	1,950 64	20 00		No....			
14Kinney, W. L. (Dighton Ex.), Marion							No.....	85		40 00	92 08	92 08	No....			
bLaberteaux Tel. Line, Leslie							Yes...	91	*300 00	300 00	75 00	37 50	No....			
Lake & Osceola County Co-op. Tel. Co., Tustin	Yes....	88											No....			
27Lake Ann & Oviatt Tel. Co., Empire, R. F. D. No. 1			Yes F.M	91					123 64	123 04			No....			
Lake Region Tel. Co., Peacock	Yes....	89					No.....	91	986 00	986 00						
Lake View Tel. Co., Hastings	Yes....	88					No.....	91	194 87	194 87	121 50	99 38	No....			
Lancer View Tel. Co., Lancer	Yes....	71					No.....	91	270 00	125 00	61 00	61 00	No....			
							No.....	85		62 00	63 00	63 00	No....			

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	Mutual roadway	Transcript page	Farmers' mutuals or rurals composed of mutual companies	Transcript page	Sub-licensees	Transcript page	For profit other than cheaper rental of telephones or manager's income	Transcript page	Estimated cost of property	Cost of property	Gross receipts	Expenses	Organized for profit. No.	Organized for profit. Yes.
Lapeer Twp. Central, Hunters Creek	Yes....	71	.....	.....	.....	.....	No.....	85	.....	$100 00	.....	$84 00	No.....	.....
Larkin Rural Tel. Co., Midland, R. F. D. No. 6	Yes....	97	.....	.....	.....	.....	No.....	99	$540 00	250 00	.....	60 00	No.....	.....
Lazerlere, C. H., Clinton	Yes....	71	.....	.....	.....	.....	No.....	85	.....	36 00	.....	.....	No.....	.....
Leelanau Mutual Tel. Co., Northport	Yes....	90	.....	.....	.....	.....	No.....	91	*325 00	325 00	$175 00	175 00	No.....	.....
28Leighton Tel. Co., Moline	.....	.....	Yes F.M	91	.....	.....	No.....	91	1,500 00	225 00	236 00	250 00	No.....	.....
29Leota Tel. Co., Evart	.....	.....	.....	.....	.....	.....	Yes..	92	224 00	224 00	142 38	44 79	.....	Yes.
Le Roy Rural Tel. Co., Le Roy	Yes....	89	.....	.....	.....	.....	No.....	91	44 59	44 59	.....	.....	No.....	.....
Le Roy Twp. Tel. Co., Le Roy	Yes....	89	.....	.....	.....	.....	No.....	91	100 00	100 00	.....	.....	.....	.....
Lester Tel. Co., Montgomery	Yes....	71	.....	.....	.....	.....	No.....	85	.....	.....	.....	82 50	No.....	.....
Littlefield, J. L., Farwell	.....	.....	.....	.....	.....	.....	.....	.....	*175 00	175 00	.....	.....	No.....	.....
Little River Tel. Co., Morley, R. F. D. No. 2	Yes....	88	.....	.....	.....	.....	.....	.....	166 47	166 47	.....	.....	No.....	.....
Locke, A. J. (J. Angus Gowing), Lock-Port, Midland, R. F. D. No. 7	.....	.....	Yes...	69	.....	.....	No.....	85	400 00	.....	.....	.....	.....	.....
Lone Pine Tel. Co., Lapeer	Yes....	71	.....	.....	.....	.....	No.....	85	.....	43 36	.....	.....	No.....	.....
30Loxley Tel. Co., Loxley	.....	.....	.....	.....	.....	.....	.....	.....	*47 50	47 50	34 20	50 00	.....	Yes f
Lucas Farmers Tel. Co., Lucas	Yes....	90	.....	.....	.....	.....	No.....	91	*600 00	600 00	.....	.....	No.....	.....
Lumen & Curtis, Coleman	Yes....	97	.....	.....	.....	.....	No.....	99	390 00	.....	.....	43 30	No.....	.....
Luther & Hoxeyville Tel. Co., Luther	Yes....	89	.....	.....	.....	.....	No.....	91	340 00	493 00	.....	.....	No.....	.....
31Lyndilla Tel. Co., Gregory, R. F. D. No. 2	.....	.....	.....	.....	Yes...	68	No.....	110	4,350 00	.....	473 60	629 00	No.....	.....
Lyons Mutual Tel. Co., Lyons, Ohio: Morenci, Mich.	.....	.....	.....	.....	.....	.....	.....	.....	*237 00	237 00	.....	.....	No.....	.....
Lardie, Jno. (Peninsula Farmers)	.....	.....	.....	69	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

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Name.	From complainants' witnesses.									From annual reports, June 30, 1909.—Ex. "B."			From supplemental reports. pp. 128-138, 190.	
	Mutual roadway	Transcript page	Farmers' mutuals or rurals composed of mutual companies	Transcript page	Sub-licensees	Transcript page	For profit other than cheaper rental of telephones or manager's income	Transcript page	Estimated cost of property	Cost of property	Gross receipts	Expenses	Organized for profit.	
													No.	Yes.
39Niedermeier, A. E., Newport	.....	.....	Yes....	69	.....	.....	No.....	85	1,220 00	35 00	307 68	.....	.....	Yes.
Noone, John H., Pres. (now Louis Hoenes), Clinton	Yes....	71	.....	.....	.....	.....	No.....	85	.....	.....	.....	.....	No.....	.....
40North Adams Tel. Co., North Adams	.....	.....	.....	.....	Yes....	102	.....	.....	$12,000 00	.....	$309 00	.....	No.....	.....
North Baltimore Tel. Co., Quimby	Yes....	89	.....	.....	.....	.....	.....	.....	*554 00	$554 00	125 00	$125 00	No.....	.....
North Bethany Tel. Co., Breckenridge	Yes....	71	.....	.....	.....	.....	No.....	85	.....	27 37	255 00	236 00	No.....	.....
bNorth Burns Tel. Co., Byron	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	No.....	.....
North Custer Tel. Co., Scottville	Yes....	72	.....	.....	.....	.....	No.....	85	.....	115 36	.....	.....	.....	.....
Northeast Bethany Tel. Co. (Northwest Bethany), St. Louis	Yes....	72	.....	.....	.....	.....	No.....	85	.....	100 00	.....	.....	.....	.....
41Northeastern Tel. Co., Mio	.....	.....	.....	.....	.....	.....	.....	.....	*1,200 00	1,200 00	500 00	610 00	.....	Yes.
North East Leslie Tel. Co., Leslie	.....	.....	.....	.....	.....	.....	.....	.....	*281 36	281 36	97 50	88 90	No.....	.....
North East Wheeler Tel. Co., Wheeler	Yes....	72	.....	.....	.....	.....	No.....	85	.....	72 00	80 00	80 00	No.....	.....
North Flushing Roadway Co., Flushing	Yes....	72	.....	.....	.....	.....	No.....	85	.....	.....	.....	.....	No.....	.....
North Gilmore Roadway Co., Farwell	Yes....	72	.....	.....	.....	.....	No.....	85	.....	50 00	8 17	20 00	No.....	.....
North Grant & Hersey Tel. Co., Hersey	Yes....	71	.....	.....	.....	.....	No.....	85	.....	.....	.....	.....	No.....	.....
North Hersey Tel. Co., Hersey	Yes....	90	.....	.....	.....	.....	.....	.....	258 78	258 78	.....	455 55	No.....	.....
North Leoni & Grass Lake, Grass Lake	.....	.....	.....	.....	.....	.....	.....	.....	*120 00	120 00	.....	20 00	No.....	.....
North Marshall Tel. Co., Ceresco	Yes....	72	.....	.....	.....	.....	No.....	85	.....	.....	.....	.....	No.....	.....
North Osceola Tel. Co., Evart	Yes....	88	.....	.....	.....	.....	No.....	91	180 00	83 20	.....	.....	.....	.....
North Oxford Rural Tel. Co., Oxford	Yes....	72	.....	.....	.....	.....	No.....	85	.....	72 20	.....	80 34	No.....	.....
North Paradise Tel. Assn., Kingsley P. O.	Yes....	90	.....	.....	.....	.....	.....	.....	*382 75	382 75	68 75	212 60	No.....	.....
North Perrington Mutual, Perrington	Yes....	97	.....	.....	.....	.....	No.....	99	330 00	143 30	.....	.....	No.....	.....
North Quincy Tel. Co., Quincy	.....	.....	.....	.....	.....	.....	.....	.....	*125 00	125 00	130 50	120 70	No.....	.....

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bNorth Rivers & Leslie Tel. Co., Leslie													5 00	150 00	•No	
North Rose Tel. Co., Holly	Yes	72					No	85							No	
North Shade Tel. Co., Middleton	Yes	97					No	99	1,200 00		31 25				No	
North Star Tel. Co., Cement City	Yes	71					No	85			6 00				No	
Norvell & Manchester Tel. Co., Norvell	Yes	72					No	85					12 13	13 30	No	
North Western Rural Tel. Co., Oxford	Yes	72					No	95			400 00				No	
North Western Leslie & N. E. Onondaga Tel. Co., Leslie									*600 00		600 00		44 00	27 00	No	
North Western Mason Co. Tel. Co., Ludington R. F. D. No. 4									*90 02		90 02			64 00	No	
North West Quincy Tel. Co., No. 1, Quincy									*55 04		55 04		73 15	65 79	No	
North West Rutland Tel. Co., Irving	Yes	88					No	91	494 26		494 26			69 00	No	
42North Western Tel. Co., Canandaigua	Yes	72					No	85			1,130 00		210 00	125 00		Yes f
North Winfield Tel. Co., Morley	Yes	88					No	91	460 00		500 00				No	
Okemos & Haslett, Okemos									*200 00		200 00		65 50	67 50	No	
43Onekama Tel. Co., Onekama	Yes	72					No	85			317 85		138 00	94 85		Yes.
Onondaga Tel. Co., Onondaga									*132 00		132 00		354 00	273 29	No	
Orangeville & Prairieville Rural, Doster									*131 00		131 00		150 00	210 00	No	
Oregon Central Roadway Co., Lapeer	Yes	72					No	85			84 45				No	
Ovid Mutual Tel. Co., Shepardsville	Yes	72					No	85			33 75		416 31	446 87	No	
bPartello & Springport, Springport													160 00	160 00	No	
Partello Telephone Co., Marshall	Yes	72					No	85			40 00		360 00	343 00	No	
Park Avenue Tel. Co., Hersey	Yes	72					No	85			123 37		124 46	123 37	No	
Peninsula Farmers Tel. Co. (Jno. Lardie), Old Mission			Yes	69			No	85	1,280 00		216 00			10 00	No	
Perrington Independent Tel. Co., Perrington									*437 00		437 00			5 50		
Perryville Tel. Co., Holly	Yes	72					No	85			260 00				No	
44Pinconning Mutual Tel. Co., Pinconning					Yes	68	Yes	108	2,069 00		1,033 00		37 19	106 20	No	
Pine Creek Tel. Co., Lapeer	Yes	72					No	85			50 00				No	
Philip Roadway Co., Marine City	Yes	72					No	85			145 61		145 61		No	
bPleasant Lake Tel. Co., Leslie															No	
Posy & West Tel. Co., Evart	Yes	88					No	91	728 00		3 32			4 75	No	
Portage Lake Tel. Co., Grass Lake									*51 00		51 00		73 15	51 61	No	
bPorterville Onondaga, Leslie															No	
45Portland Tel. Co., Portland															No	
46Port Sheldon & Lake Shore, Grand Rapids					Yes	102	Yes	108	3,115 00		3,115 27				No	
Powell Roadway Co., Plainwell	Yes	72					No	85	*600 00		600 00		86 25	21 80		Yes.
														32 50	No	

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Puddigott Roadway Tel. Co., St. Clair	Yes....	72					No.....	85		1 50	99 00	90 75	No.....	
Randolph Tel. Co., LeRoy	Yes....	89					No.....	91	$120 86	$120 86	$10 00	$0 75	No.....	
Range Line No. 186, St. Clair	Yes....	72					No.....	85		150 00	91 00	10 00	No.....	
Ranney Tel. Co., Rives Junc	Yes....	72					No.....	85		1 77	34 50	30 27	No.....	
Rau, S. M., M. S. T. Co., Weidman			Yes....	69			No.....	85	620 00	225 00			No.....	
Ray Centre Tel. Co., New Haven	Yes....	72					No.....	85		170 00			No.....	
Reading Tel. Co., Reading									*1,500 00	1,500 00	83 31	364 36	No.....	
Richardson Roadway Co., Algonac	Yes....	72					No.....	85		114 15			No.....	
Richland Twp. Tel. Co., McBain	Yes....	90					No.....	91	1,060 00	705 80	39 75	39 75	No.....	
47Riga Farmers' Tel. Co., Riga					Yes....	102			1,920 00	580 00	232 00	232 00	No.....	
Riverside Tel. Co., Lapeer	Yes....	72					No.....	85		44 25			No.....	
River Roadway Tel. Co., Marine City, R. F. D. No. 2	Yes....	72					No.....	85		56 68	85 18	28 50	No.....	
Rives & Leslie Tel. Co., Rives Junc									*400 00	400 00	230 00	270 00	No.....	
Rose Center Tel. Co., Holly	Yes....	72					No.....	85			97 00	97 00	No.....	
Rose Lake Tel. Co., LeRoy	Yes....	89					No.....	91	448 40				No.....	
Rural Co-op. Tel. Co., Quimby	Yes....	88					No.....	91	643 23	643 23	130 90	133 78	No.....	
bRutland Tel. Co., Shultz	Yes....	88					No.....	91			112 50	114 25	No.....	
Salt River Tel. Co., Rosebush, R. F. D. No. 1	Yes....	97					No.....	99	690 00	256 75	394 75	394 75	No.....	
48Samaria Farmers Tel. Co., Samaria					Yes....	68			3,210 00	10 00	216 00	214 00	No.....	
Sanford Mutual Tel. Co., Ltd., Sanford									900 00	850 00			No.....	
Sauble Telephone Co., Ludington, R. F. D. No. 5	Yes....	73					No.....	85		97 00			No.....	

Sawyerville Tel. Co., Le Roy, R. F. D. No. 5	Yes....	89					No.....	91	247 00	247 00	.....	8 14	No.....	.....
bSeneca Bimo Tel. Co., Seneca													No.....	.....
Sheridan Roadway Co., Clare, R. F. D. No. 2	Yes....	72					No.....	85	.....	56 00	2 00	4 00	No.....	.....
Sherman City Rural Tel. Co., Freesoil	Yes....	97					No.....	99	960 00	634 45	382 75	362 00	No.....	.....
Sherman Tel. Co., Freesoil	Yes....	73					No.....	85	.....	.....	.....	.....	No.....	.....
26Shiawassee Mutual Tel. Co. (R. C. Kinney), Bancroft					Yes....	102			2,612 00	.....	191 00	173 41	No.....	.....
bShultz Tel. Co., Shultz	Yes....	89					No.....	91	.....	.....	60 00	60 00	No.....	.....
Sidney Tel. Co., Sidney	Yes....	97					No.....	99	1,050 00	350 00	.....	.....	No.....	.....
Schaub, Simon, Provemont			Yes....	69			No.....	85	900 00	155 00	55 00	55 00	No.....	.....
50Smith & Laird (Terre Haute, Ind.), Brutus					Yes....	102			125 00	125 00	.....	75 00	.....	.....
Soper, H. E. (Lum Rural Ex.), Lum				68					*182 10	182 10	298 29	312 00	No.....	.....
South Antrim Tel. Co., Morrice									*45 00	45 00	100 00	80 00	No.....	.....
53South Bend Home Tel. Co., South Bend, Ind.									*396 34	.....	396 34	.....	.....	Yes.
South Bethany Tel. Co., St. Louis	Yes....	72					No.....	85	.....	58 00	63 20	63 20	No.....	.....
South Bunker Hill & North Henrietta, Munith, R. F. D. No. 1									*130 00	130 00	100 00	100 00	No.....	.....
South Burns Tel. Co., Byron	Yes....	72					No.....	85	.....	50 00	.....	2 00	No.....	.....
South Butler Tel. Co., Quincy									*5 00	5 00	26 00	30 00	No.....	.....
South Fulton Rural Tel. Co., Perrington	Yes....	98					No.....	99	540 00	244 14	.....	50 00	No.....	.....
South Groveland Roadway Co., Holly	Yes....	73					No.....	85	.....	139 63	171 98	171 98	No.....	.....
South Hinton Tel. Co., Lakeview	Yes....	98					No.....	99	390 00	345 00	.....	42 25	No.....	.....
South Ogden Tel. Co., Ogden									*237 71	237 71	.....	237 71	.....	.....
South Rose Tel. Co., Holly	Yes....	72					No.....	85	.....	.....	.....	.....	.....	.....
South Rutland Center Tel. Co., Hastings	Yes....	88					No.....	91	232 92	232 92	58 65	58 65	No.....	.....
South Town Line Roadway Co., Metamora	Yes....	72					No.....	85	.....	210 00	.....	.....	No.....	.....
Southwest Springfield Tel. Co., Davisburg	Yes....	73					No.....	85	.....	146 12	.....	146 12	No.....	.....
Springborn Road Tel. Co., Marine City	Yes....	73					No.....	85	.....	195 00	.....	.....	No.....	.....
bSpringbrook Tel. Co., Springport				87					.....	.....	44 00	44 00	No.....	.....
Springvale Tel. Co., Springvale	Yes....	72					No.....	85	.....	421 85	15 00	15 00	No.....	.....
St. Clair China Roadway Co., St. Clair	Yes....	70					No.....	85	.....	92 00	92 00	92 00	.....	.....
St. Clair River Tel. Co., St. Clair	Yes....	72					No.....	85	.....	171 06	.....	8 87	No.....	.....
St. Clair Roadway Co., Marine City	Yes....	72					No.....	85	.....	103 00	.....	.....	No.....	.....
51Stafford, Wm., R. Port Hope					Yes....	68	Yes..	110	243 00	75 00	85 00	60 00	.....	Yes.

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Standish Tel. Co., Standish, R. F. D. No. 3									*341 00	341 00	72 00	296 00	No.....	.....
Star Mutual Tel. Co., Luther	Yes....	89					No.....	91	155 70	155 70	.....	.....	No.....	.....
Star Tel. Co., Alba									*38 00	38 00	55 00	5 00	No.....	.....
Star Tel. Co., Hastings		89							118 37	118 37	.....	.....	No.....	.....
Star Tel. Co. (Jno. Snyder), Mecosta			Yes....	103			No.....	85	$740 00	.....	.....	.....	No.....	.....
Starville Roadway Co., Marine City	Yes....	73					No.....	85	.....	$90 00	.....	$55 00	.....	.....
52State Road Tel. Co., Goodells	Yes....	72					No.....	85	.....	207 50	.....	.....	.....	.....
bState Road Telephone Co., Hastings	Yes....	88					No.....	91	.....	.....	.....	.....	No.....	.....
State Road Tel. Co. of Henrietta Twp., Munith, R. F. D. No. 1									*67 28	67 28	.....	173 88	No.....	.....
State Roadway Co., St. Charles									*93 20	93 20	.....	.....	No.....	.....
State Roadway Co., St. Clair	Yes....	72					No.....	85	.....	.....	.....	.....	No.....	.....
Stevenson Lake Roadway Co., Clare	Yes....	73					No.....	85	.....	28 50	.....	19 25	No.....	.....
Stony Run Tel. Co., Holly	Yes....	72					No.....	85	.....	181 35	$145 00	145 00	No.....	.....
Stringey Lakes Rural Tel. Co., Oxford, R. F. D. No. 2	Yes....	73					No.....	85	.....	71 46	127 46	127 46	No.....	.....
Sugar Grove Tel. Co., Scottville	Yes....	72					No.....	85	.....	67 22	.....	7 00	No.....	.....
Sumner Rural No. 1 (Jos. Kleis), Carson City	Yes....	98					No.....	99	510 00	410 03	.....	.....	No.....	.....
Summit Tel. Co., Ludington	Yes....	72					No.....	85	.....	168 00	5 00	42 00	No.....	.....
Snyder, Jno. (Star Tel. Co.)				69										
Seegmiller, Adam (Farmers Mut.), Summit City				69										

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49Seneca Exchange (Clayton Sand Creek, Bimo)							68									
54 Taylor, F. H., Pickford					Yes....	68	Yes...	108	2,600 00	1,350 00	4 50	3 00			Yes.	
Theisen Roadway Co., St. Clair, R. F. D. No. 2	Yes....	73					No.....	85								
Thompson Tel. Co., Lapeer	Yes....	107					No.....	55					No.....			
Tobey Tel. Co., Freesoil	Yes....	73					No.....	85					No.....			
Toledo Beach Home Tel. Co., Temperance									*1,936 00	1,936 00	61 32	323 92				
bTompkins Exchange, Tel., Rives Junction, No. 1											35 13	19 70	No.....			
Town Corner Tel. Co., Tustin	Yes....	88					No.....	91	21 90				No.....			
Townline Roadway Co., Boyne City	Yes....	73					No.....	85		92 00		15 00	No.....			
Townline Roadwny Co., St. Clair	Yes....	73					No.....	85					No.....			
Townline Tel. Co., Ashley	Yes....	98					No.....	99	210 00	100 00						
Townline Tel. Co., White Cloud	Yes....	89					No.....	91		95 41	111 41	9 80	No.....			
55Townsend, G. S., Six Lakes		98					Yes...	99	780 00	576 30	187 00	117 50	No.....			
bTrist Telephone Co., Munith												81 00	No.....			
bUnited Tel. Co., Fremont	Yes....	89	Yes F.M	91			No.....	91								
Van Tilburg Tel. Co., Galien	Yes....	73					No.....	85		86 72			No.....			
Vernon Roadway, Clare	Yes....	73					No.....	85				64 00	No.....			
Village Hill Tel. Co., Fremont	Yes....	89					No.....	91	160 00	25 00		2 40	No.....			
Wakefield Tel. Co., Dryden, R. F. D. No. 2	Yes....	73					No.....	85		125 00	7 00	2 00	No.....			
56Wallace Tel. Co., Wallace					Yes....	68	Yes...	108	490 00	40 91	76 23	81 84			Yes.	
Walnut Lake, Birmingham	Yes....	73					No.....	85		300 00			No.....			
Washburn Roadway Line, Glendora	Yes....	73					No.....	85		200 00			Mutual			
Washington Center Mutual Tel. Co., Pompeii		98							4,500 00	5 50			No.....			
bWaterloo Central Tel. Co., Munith											9 90	96 80	No.....			
Wedel Roadway Co., Galien	Yes....	73					No.....	85		40 75			No.....			
Weipert & Meyers, Strasburg			Yes....	69			No.....	85	990 00							
West Amber Tel. Co., Ludington	Yes....	73					No.....	85		112 00	56 00	56 00	No.....			
West Argentine Tel. Co., Byron	Yes....	73					No.....	86		285 00		12 95	No.....			

AND VERTICAL IN BOOK

Name.	From complainants' witnesses.								From annual reports, June 30, 1909.—Ex. "B."			From supplemental reports. pp. 128-138, 190.	
	Mutual roadway	Transcript page	Farmers' mutuals or rurals composed of mutual companies	Transcript page	Sub-licensees	Transcript page	For profit other than cheaper rental of telephones or manager's income	Transcript page	Estimated cost of property	Cost of property	Gross receipts	Expenses	Organized for profit. No.	Organized for profit. Yes.
West Attica Tel. Co., Lapeer	Yes	73					No	85		$215 10			No	
West Burns Tel. Co., Bancroft	Yes	98					No	99	$240 00	200 00			No	
West Flushing Roadway Co., Flushing	Yes	73					No	85		97 75		$53 00	No	
West Rose Roadway Co., Davisburg	Yes	73					No	85		125 00			No	
West Rutland Tel. Co., Hastings	Yes	88					No	91	420 00	494 26	$69 60	69 60		
West Townline, Lapeer	Yes	73					No	85		175 00	9 00	148 10	No	
Whitford Tel. Co., Whiteford Center									*27 50	27 50	6 00	51 25	No	
White River Tel. Co., White Cloud	Yes	89					No	91	22 80				No	
White River Valley Tel. Co., White Cloud, R. F. D. No. 1	Yes	89					No	91	365 23	365 63	370 00	365 63	No	
Wilcox Tel. Co., White Cloud	Yes	89					No	91	306 75	6 30	6 00	47 10	No	
Willover Tel. Co., Holly	Yes	73					No	85		77 17			No	
Winn Rural, Winn			Yes	69			No	85	2,300 00	1,456 00	12 00	11 00	No	
Winsor, R. J., Boyne, R. F. D. No. 2	Yes	73					No	85		125 00			No	
58Wisconsin Land & Lumber Co., Hermansville					Yes	68			297 00				No	
bWise Mutual, Coleman	Yes	98					No	99					No	
Wise Telephone Co., Loomis	Yes	73					No	85		200 00	100 00	100 00	No	
Woodville Tel. Co., Woodville	Yes	73					No	85			190 40	185 30	No	
bWolf Creek F. Mutual, Adrian, R. F. D. No. 4											200 00	200 00	No	

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Wright Roadway, Plainwell	Yes	73					No	85		75 00			No	
b57 Wausseon Tel. Co. (North Western Tel. Co.), Wausseon, Ohio											25 00			Yes.
Yankee Street Roadway, St. Clair	Yes	73					No	85					No	
Zaring Roadway, Galien	Yes	73					No	85		330 65	152 25	155 20	No	
To which we add the following not on the State Board of Assessors list under name given:														
W. C. Mueller					Yes	68			$551 00					
Munith Tel. Co					Yes	68			7,600 00					
Cement City Connection					Yes	102			5,000 00					
W. B. Covey (Honor Tel. Co.)			Yes	69			No	85	1,520 00					
O. W. Eaton			Yes	69			No	85	1,100 00					
Geo. V. Joyce			Yes	69			No	85	1,780 00					
R. L. Winslow (assessed 1909)			Yes	69			No	85						
Total									$207,509 34	$101,818 64	$29,068 67	$32,444 18		20
Add for roadway companies listed by Mr. Berry on transcript pp. 104-108 inclusive (including companies not found on Board of Assessors list)									$88,518 00					
Total									g$296,027 34					
Deduct value of M. S. T. property in hands of exempted institutions	Yes		Yes		Yes		No	Yes	31,765 00					
Total	277		34		34		306	15	h$264,262 34					20

* Cost of property supplied from annual report as shown in Exhibit "B."
a Included in complainants estimate of cost of Brooklyn Switchboard Assn.
b No value proven.
c Included in complainants estimate of cost of S. A. Hempstead.
d Assessed (see Exhibit "A.")
e Co-operative for profit and cheaper telephone rental.
f Co-operative or farmers or for cheaper telephone rental.
g Tax on this at average of average rate $5,201.20.
h Tax on this at average of average rate $4,643.09.

VERTICAL IN BOOK

Name of company.	Cost of production, etc.								There is proof that not for profit or mutual. None contrary.	New in 1909.	Will be taxed for 1910.	Size and extent of business from reports 1909 or 1910 or complainant's testimony.				Transcript pages on which there is specific reference to this company.
	From 1909 reports (or 1910).	From complainant's witnesses; where none, from 1909 or 1910 reports.	Taxes on highest value at average of average rate.	For profit other than cheap rental of telephones.												
				Cost.	Taxes on highest value at average of average rate.	Earnings.	Telephones.	Mileage of line.				Earnings.	Expenses.	Telephones.	Mileage of line.	
1 Amble Telephone Co	$438	$438	$7 70	$438	$7 70	$40	67	4.5	.....	$438	$438	$40	.....	67	4.5	87-90-91-112-116-128-138-206.
2 Ashley Home Telephone Co	.....	1,350	23 72	.....	.....	.....	.....	.....	.....	1,350	1,350	.....	.....	.....	.....	68-102-109-125-128.
3 Bates, M. A. (Grayling Cit. Tel. Co.)	.....	4,060	71 33	4,060	71 33	328	116	.....	.....	4,060	4,060	328	.....	116	.....	68-102-109-111-126-132-206.
4 Berrien County Home Tel. Co	8,000	8,000	140 56	.....	.....	.....	.....	.....	.....	8,000	8,000	.....	.....	120	.....	128-191
5 Bridgman Telephone Co	.....	983	17 27	.....	.....	.....	.....	.....	$983	.....	983	400	$450	.....	.....	68-102-109-125-129.
6 Brooklyn Switchboard Ass'n	250	12,000	210 84	.....	.....	.....	.....	.....	12,000	.....	.....	.....	.....	325	.....	68-102-109-110-111-125-129-144-147-148-149-150-152-190-207.
7 Bryan Telephone Co	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	186	25	4	7	129.
8 Burr Oak Mutual	2,143	2,265	39 79	.....	.....	.....	.....	.....	2,265	2,265	.....	26	90	.....	.....	102-110-129-209.
9 Carr Telephone Co	350	550	9 66	.....	.....	.....	.....	.....	550	550	.....	26	25	41	14.	129-191.
10 Cement City	.....	5,000	87 85	.....	.....	.....	.....	.....	5,000	.....	.....	.....	.....	205	.....	102-111-126-150-151-174-188.
11 Citizens of Alcona County	467	467	8 21	.....	.....	.....	.....	.....	.....	467	467	29	62	.....	.....	68-102-108-109-126-129.
12 Citizens of Berrien (New Troy)	1,210	2,300	40 41	.....	.....	.....	.....	.....	2,300	.....	2,300	414	196	70	.....	68-102-109-111-125-129.
13 Crystal Telephone Co	200	3,000	52 71	.....	.....	.....	.....	.....	3,000	.....	3,000	231	234	83	.....	94-99-118-130-144.
14 Dighton Exchange (W. L. Kinney)	300	300	5 27	.....	.....	.....	.....	.....	300	.....	.....	75	37	.....	.....	87-91-133-192-193.
15 Drenthe Independent Tel. Co	1,390	1,390	24 42	.....	.....	.....	.....	.....	1,390	.....	.....	8	18	57	.....	88-91-130.
16 East Saugatuck Tel. Co	1,472	1,472	25 86	.....	.....	.....	.....	.....	1,472	.....	1,472	435	606	85	.....	87-91-131-138-191-193.
17 East Shore Tel. Co	1,200	1,064	18 69	1,064	18 69	275	20	11.	.....	.....	.....	275	220	20	11.	68-102-110-111-126-131-206.
18 Farmers Independent Tel. Co	1,500	1,500	26 36	.....	.....	.....	.....	.....	1,500	.....	.....	360	360	75	.....	89-102-111-112-131-192-193.
19 Fulton Mutual Tel. Co	.....	585	10 40	.....	.....	.....	.....	.....	585	.....	585	.....	70	14	4.75	68-102-110-126-132.
20 Gobleville Farmers Tel. Co	1,333	1,333	23 42	.....	.....	.....	.....	.....	1,333	.....	1,333	450	283	75	.....	87-91-113-116-132-138.
21 Hempsted, S. A	400	2,010	35 32	2,010	35 32	392	67	.....	.....	.....	.....	392	200	67	.....	68-102-110-126-132-206.
22 Hill's Rural Tel. Co	583	981	17 23	981	17 23	230	23	31.	.....	.....	.....	230	215	23	31	68-102-110-132-206.
23 Holloway Tel. Co	.....	1,200	21 08	.....	.....	.....	.....	.....	1,200	.....	1,200	489	427	2	.....	102-111-132-192-193.
24 Houghton Lake Tel. Co	714	714	12 54	714	12 54	137	11	35	.....	.....	.....	137	125	11	35	90-92-93-94-98-119-133-138-206.
25 Kalamazoo Home Tel. Co	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	350	.....	20	.....	133-191.
26 R. C. Kinney (Shiawassee Mutual)	300	2,612	45 89	2,612	45 89	75	.....	.....	.....	.....	.....	75	37	.....	.....	68-102-110-126-136-206.
27 Lake Ann & Oviatt Tel. Co	986	986	17 32	.....	.....	.....	.....	.....	986	.....	986	121	99	3	.....	87-91-113-133-138-192-193.
28 Leighton Tel. Co	225	1,500	26 36	.....	.....	.....	.....	.....	1,500	.....	.....	236	250	50	.....	88-91-114-116-133.
29 Leota Tel. Co	224	224	3 94	224	3 94	112	3	11	.....	.....	.....	112	44	3	11	90-92-93-94-98-119-133-138-206.
30 Loxley Tel. Co	47	47	83	.....	.....	.....	.....	.....	47	.....	.....	34	50	21	18	133-191.
31 Lyndilla Tel. Co	1,876	4,350	76 43	.....	.....	.....	.....	.....	4,350	.....	4,350	476	629	146	50	68-102-110-126-133-144.
32 Manitou Beach Tel. Co	.....	270	4 74	.....	.....	.....	.....	.....	270	.....	.....	.....	.....	10	.....	68-102-110-126-133.
33 Mason & Okemos	4,840	4,840	85 04	.....	.....	.....	.....	.....	4,840	.....	.....	408	27	.....	.....	134-191.
34 Meade Tel. Co	2,000	2,100	36 90	.....	.....	.....	.....	.....	2,100	.....	.....	36	36	70	.....	68-102-110-126-134-189.
35 Middleton Farmers' Tel. Co	780	1,890	33 21	.....	.....	.....	.....	.....	1,890	.....	.....	104	65	65	24	68-102-110-127-134.
36 Moore, Andrew J	56	351	6 17	351	6 17	166	15	15	.....	.....	.....	166	166	15	15	68-102-110-127-134-206.
37 Mueller, Wm. C	.....	551	9 68	.....	.....	.....	.....	.....	551	.....	.....	.....	.....	13	.....	68-102-110-126.
38 Munith Tel. Co	.....	7,600	133 53	.....	.....	.....	.....	.....	7,600	.....	.....	.....	.....	304	.....	68-102-110-152-158.
39 Neidermeier, A. E	35	1,220	21 44	1,220	21 44	307	.....	4	.....	.....	1,220	307	.....	.....	4	69-103-134-191-193-206.
40 North Adams Tel. Co	.....	12,000	210 84	.....	.....	.....	.....	.....	12,000	.....	.....	.....	.....	400	.....	102-111-134-152-196-197-205.
41 North Eastern Tel. Co., Mio	1,200	1,200	21 08	1,200	21 08	500	.....	90	.....	.....	1,200	500	610	.....	90	134-193-206.
42 North Western Tel. Co. (Canandaguia)	1,130	1,130	19 85	.....	.....	.....	.....	.....	1,130	.....	.....	210	125	21	15	72-135-138-191.
43 Onekama Tel. Co	317	317	5 57	317	5 57	138	13	7	.....	.....	.....	138	95	13	7	72-135-191-206.
44 Pinconning Mutual Tel. Co	1,033	2,069	36 35	.....	.....	.....	.....	.....	2,069	.....	2,069	37	106	76	32	68-102-108-110-127-135.
45 Portland Tel. Co	3,115	3,115	54 73	.....	.....	.....	.....	.....	3,115	3,115	3,115	.....	.....	147	55	102-108-111-135-192-193.
46 Port Sheldon & Lake Shore Tel. Co	600	600	10 54	600	10 54	86	9	5	.....	.....	.....	86	21	9	5	135-192-206.
47 Riga Farmers Tel. Co	580	1,920	33 73	.....	.....	.....	.....	.....	1,920	.....	.....	232	222	58	.....	102-111-136-192.
48 Samaria Farmers Tel. Co	10	3,210	56 40	.....	.....	.....	.....	.....	3,210	.....	3,210	216	214	112	.....	68-102-110-127-136.
49 Seneca Exchange	40	2,700	47 44	.....	.....	.....	.....	.....	2,700	.....	.....	15	3	90	.....	68-102-110-127-130.
50 Smith & Laird	.....	125	2 20	.....	.....	.....	.....	.....	125	.....	.....	.....	.....	2	.....	102-111-136-192.
51 Stafford, Wm. R	75	243	4 27	243	4 27	85	9	1.4	.....	.....	.....	85	60	9	1.4	68-102-110-127-137-206.
52 State Road Telephone Co	207	207	3 64	.....	.....	.....	.....	.....	207	.....	.....	.....	.....	7	7	72-88-137-192.
53 South Bend Home Tel. Co	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	Yes	336	.....	3	26	136-192-193.
54 Taylor, F. H	1,350	2,000	35 14	2,000	35 14	450	40	30	.....	.....	2,000	450	300	40	30	68-102-108-110-111-127-137-206-209.
55 Townsend, G. S	576	780	13 70	780	13 70	187	26	.....	.....	.....	.....	187	117	26	.....	98-99-119-120-137-206.
56 Wallace Telephone Co	40	490	8 61	490	8 61	76	8	.5	.....	.....	.....	76	81	8	.5	68-102-108-110-127-137-206.
57 Wauseon (N. W. Ohio)	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	25	.....	.....	8.	138-192.
58 Wisconsin Land & Lumber Co	.....	297	5 22	.....	.....	.....	.....	.....	297	.....	.....	.....	.....	11	.....	68-102-108-110-126-127-138.
Total	$43,792	$113,906	$2,001 43	$19,304	$339 16	3,584	427	245.40	$84,785	$20,245	$43,338	$9,549	$7,010	3,182	506.15	

Remarks:
5 Sold to Citizens of New Troy.
6-10-21-26-34-38-40-48-49 Exchange for roadways; cost includes lines of large number of roadways.
8 A new company late in 1909.
25 Under construction.
26 Not now operating.

Remarks:
31 Upon corrected report company should have been assessed 1909.
37 Phones for own use. Succeeded by Wisconsin Land & Lumber Company.
45 Mutual in 1909.
49 Same as Clayton, Sand Creek and Bimo.
50-58 Phones for own use.

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FURTHER CLASSIFICATION OF 58 COMPANIES LISTED IN LAST PRECEDING TABLE.

HIGHEST FIGURES IN RECORD TAKEN.

Value of all from last table above		$113906
New Companies (not operating 1909) 8 Companies	$ 20245	
Exchanges for Roadways (*6, 10, 21, 26, 34, 38, 39, 40, 48, 49)	50452	
Private Telephones (*37, 50, 58)	973	
Mutuals, Farmers Mutuals and Unidentified Roadways, 21 Companies (*5, 12, 13, 14, 15, 16, 18, 19, 20, 23, 27, 28, 30, 31, 32, 33, 35, 42, 44, 47, 52)	33272	
Profit making (12 Companies, see below)	**8964**	
	$113906	$113906
Total of Profit-making Companies, (17 in number)		$ 19304
New Companies, (2 in number) (*1, 3)	$ 4498	
Exchanges for Roadways, (3 in number) (*21, 26, 39)	5842	
Remainder, Profit-making, (12 in number) (*17, 22, 24, 29, 36, 41, 43, 46, 51, 54, 55, 56)	**8964**	
	$ 19304	$ 19304

Note.—* Numbers refer to Companies listed under same number in preceding table.

CITIZENS' TELEPHONE COMPANY OF GRAND RAPIDS *v.* FULLER, AUDITOR-GENERAL OF THE STATE OF MICHIGAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

No. 284. Argued May 2, 1913.—Decided June 10, 1913.

Power of exemption from taxation seems to imply the power of discrimination; and in taxation, as in other matters of legislation, classification is within the legislative power—and it may be even to a greater extent.

The numerous decisions of this court reviewed in this opinion illustrate the power of the legislature of the State over the subjects of taxation and the range of discrimination that may be exercised in classification.

The legislature, having the power of classification, has also the power to select the differences on which to base the classification.

The State is not bound to rigid equality by the equal protection provision of the Fourteenth Amendment: classification simply must not be exercised in clear and hostile discrimination between particular persons and classes.

There is a clear and reasonable distinction on which to base a classification for taxation between telegraph and telephone corporations conducting for profit large businesses and having offices and exchanges in cities and villages, and those conducting a very small business for mutual convenience of the incorporators; and so *held* that the Michigan statute taxing such smaller corporations does not deny the larger corporations the equal protection of the laws because it

exempts corporations having gross receipts of less than five hundred dollars.

Where there has been a constant legislative and executive construction of a provision of the constitution of the State in regard to the title of a statute clearly expressing the object thereof, this court will not, in view of the consequences of striking down legislation, declare a statute invalid on account of defective title where, as in this case, there has been substantial compliance with the requirements of the constitution of the State in that regard.

THE facts, which involve the constitutionality under the Fourteenth Amendment of a statute of Michigan taxing telephone companies and excepting therefrom certain classes thereof, are stated in the opinion.

Mr. Thomas P. Bradfield and *Mr. Jacob Kleinhans* for appellant submitted:

An exemption of companies whose gross receipts do not exceed $500 per annum invalidates the act.

Judicial construction cannot enlarge or restrict the obvious meaning of the act. *Atty. Gen'l.* v. *Assessors*, 143 Michigan, 73; *Bate Refrigerator Co.* v. *Sulzberger*, 157 U. S. 37; *Denn* v. *Reed*, 10 Pet. 527; *Gibbons* v. *Ogden*, 9 Wheat. 1; *Leoni* v. *Taylor*, 20 Michigan, 148, 154; *People* v. *Plumstead*, 2 Michigan, 465; *Ry. Co.* v. *Phelps*, 137 U. S. 528; *Swartz* v. *Siegel*, 117 Fed. Rep. 18; *Whipple* v. *Saginaw Judge*, 26 Michigan, 342; *Wilt* v. *Cutler*, 38 Michigan, 189.

A law must operate equally and uniformly and the classification must be based upon some reasonable ground. *Am. Sugar Co.* v. *Louisiana*, 179 U. S. 89, 92; *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Cotting* v. *Stockyards Co.*, 183 U. S. 79, 112; *Field* v. *Asphalt Co.*, 194 U. S. 618, 621; *Kentucky R. R. Tax Cases*, 115 U. S. 321, 337; *McLean* v. *Arkansas*, 211 U. S. 539; *Railway Co.* v. *Ellis*, 165 U. S. 150, 160; *St. Louis Cons. Coal Co.* v. *Illinois*, 185 U. S. 203; *S. W. Oil Co.* v. *Texas*, 217 U. S. 114; *State* v. *Haun*, 61 Kansas, 146.

While the legislature has the right to make exemptions, as held in *Supervisors* v. *Auditor Gen'l*, 65 Michigan, 408; *Loan Co.* v. *Detroit*, 136 Michigan, 451; *People* v. *Auditor Gen'l*, 7 Michigan, 84, the power is not absolute and without limitation. 1 Cooley Taxation (3d ed.), 382; *Cotting* v. *Stockyards Co.*, 183 U. S. 79; *Gulf &c. Ry.* v. *Ellis*, 165 U. S. 150; *Railroad Co.* v. *Pennsylvania*, 134 U. S. 237; *Yick Wo* v. *Hopkins*, 118 U. S. 369.

The exemption does not operate to segregate any definite class of telephone companies to the exclusion of all others.

The value of non-assessed properties is substantial.

The object of the act is not expressed in the title and is in conflict with the Michigan constitution. *Atty. Gen'l* v. *Bolger*, 128 Michigan, 355; *Bresler* v. *Delray Investment Co.*, 156 Michigan, 3; *Callaghan* v. *Chipman*, 59 Michigan, 614; Cooley's Const. Lim. 143; *Depot Co.* v. *Com'nr of Railroads*, 118 Michigan, 340; *Detroit* v. *Wayne Circuit Judge*, 112 Michigan, 319; *Fish* v. *Stockdale*, 111 Michigan, 646; *In re Hauck*, 70 Michigan, 396; *Pratt Food Co.* v. *Bird*, 148 Michigan, 634; *Wilcox* v. *Paddock*, 65 Michigan, 24.

Mr. Roger I. Wykes, with whom *Mr. Grant Fellows* was on the brief, for appellee.

Mr. Justice McKenna delivered the opinion of the court.

Appellant is a telephone company, located in the city of Grand Rapids, in the State of Michigan, where it has 10,000 telephones in use, and by its own and other lines is engaged in the telephone business all over the southern peninsula. It brought this suit to restrain the collection of a tax levied on its property under a certain act of the State of Michigan, on the ground (1) that the act violates

the Fourteenth Amendment of the Constitution of the United States and (2) violates the constitution of the State because the purpose of the act is not expressed in its title.

A demurrer was filed to the bill, which was overruled. An answer was then filed and, after hearing, a decree was entered dismissing the bill. This appeal was then taken directly to this court, the case presenting questions under the Constitution of the United States.

Prior to 1909 telephone companies were taxed under Act No. 179 of the Public Acts of Michigan for the year 1899 (June 23, 1899, Pub. Acts 1899, p. 270), at the rate of 3% on their gross receipts for the year in which the tax was laid. This act also embraced express and telegraph companies. The companies were required to make a report of their gross receipts for the year ending December 1st next preceding such report. The taxes paid were to be in lieu of all other taxes.

Act No. 282 of the Public Acts of 1905 (June 16, 1905, Pub. Acts 1905, p. 439) provided for the assessment of the property of railroads and certain other companies and for the levying of taxes thereon by a State Board of Assessors. The act did not include either telephone or telegraph companies.

In 1909 the legislature passed Act No. 49 (April 28, 1909, Pub. Acts 1909, p. 77), which amended the title and certain sections of the Act No. 282 and provided for the assessment by the State Board of Assessors of the property of telephone companies on an *ad valorem* basis instead of a tax on their gross earnings, as provided by the act of 1899. The act contained this proviso: "Provided, That the property of telegraph and telephone companies whose gross receipts within this State for the year ending June thirty do not exceed five hundred dollars shall be exempt from taxation."

The contention of appellant that the act offends the

equal protection clause of the Constitution is based on that proviso. It is urged that the proviso makes an unjust discrimination between companies doing the same business by the same means and imposes a tax on their property because the business of one is large and the other small. "The business is not taxed," it is contended, "under Act 49. It is the property used in the business, and it is all of like kind and used for like purposes, and each dollar's worth should be treated alike." And it is urged that "it must be remembered that the tax in question is a tax *on property* according to its value, and not a tax on doing the business." This being the insistence of appellant, that is, that the tax is on property simply, appellant makes the property, dollar for dollar, the only basis of comparison between the taxed companies and the exempt companies, and asserts illegal discrimination. In other words, treating the tax as one on property, and this being the purpose of the statute, "each dollar's worth should be treated alike;" and it is contended, if each dollar's worth is not treated alike, there is an arbitrary classification and hence an illegal classification, because it has no proper relation to the legislative purpose.

The District Court, however, took a broader view and considered the inducement of the legislation and its administrative possibilities as giving character to its classification. The court also considered the character of the taxed and non-taxed lines, their number and comparative value and the amount of taxes which would be assessed against them. The court said:

"For the year ending June 30, 1909, 659 corporations, individuals or associations made the required report. Of these, 224 showed receipts of more than $500 each, reported property said to have cost $35,000,000.00 and reported gross receipts of $7,600,000.00. The Board assessed this property at $21,000,000.00 and levied thereon a total tax of $433,000.00 (in place of the former specific

tax, which would have been $228,000.00). Four hundred and thirty-five of the reports showed receipts of less than $500.00 each. Property belonging to the persons and companies so reporting was not assessed. The cost of this non-assessed property, at the average reported cost per telephone of all reporting companies, would be about $145,000.00; complainants' proof tends to show such cost to be about $250,000.00; $200,000.00 may fairly be assumed as such cost; and upon the comparative basis used with the larger corporations, this exempted property would have been assessed at $120,000.00. If we add an ample allowance for non-reporting, non-taxable property, it still appears that the property which escaped taxation and which forms the basis of the complaint, is not more than one per cent. of the total."

The lines may be divided into two classes, (1) lines owned by appellant and conducted for profit, and (2) lines connected with those of the first class and called sub-licensed companies, rural and roadway. There are 17 to 20 of the sub-licensed companies which operate for a profit. Their lines are connected with the main lines and may extend over a whole county or more. It is testified that the sub-licensed companies run their own business, no control being in the main line. Their lines, it is further testified, were constructed by themselves, and the instruments either leased from the main company or owned by themselves. The contracts with the sub-companies are not all alike. The main line may or may not have investment in the sub-licensed lines.

The "rural" usually belongs to an association of farmers who live along the line. It comprises a switch-board leased by the main or profit-making company to a rural manager, the main company owning the telephones on the line and receiving the entire charge for toll messages, less the manager's commission for collection. The roadways connected with a "rural" are constructed and owned

by the farmers in the same way as other roadways. The larger portion of "rurals" are contracts with individuals. The percentage of corporations in the roadway and sub-licensed lines is very small.

The "roadway" is a line owned and constructed by farmers connected with a receiving service from an existing exchange of a main line or profit-making company, or of a rural exchange manager.

The profit that is derived from the rural and roadway lines is in the reduced rate for the telephones. The manager gets the difference between what he pays the main company and what he gets from those to whom he rents.

The difference, therefore, between the tax-paying and non-tax-paying companies, or individuals is that the former, as said by the District Court, belong to commercial corporations or enterprises, organized and conducted for the purpose of earning and paying profits as or in the nature of dividends; the latter, the untaxed, are co-operative or farmers' mutual associations, usually unincorporated, conducted at estimated costs and organized primarily to get for the association cheap telephone service.

It is manifest, therefore, that there are marked differences between the taxed and non-taxed companies, and the differences might be pronounced arbitrary if the rule urged by appellant should be applied, that is, that in the taxation of property no circumstance should be considered but its value, or, to use appellant's words, "each dollar's worth should be treated alike." But such rigid equality has not been enforced. In Michigan the legislature has the power of prescribing the subjects of taxation and exemption, notwithstanding the constitution of the State requires the legislature to provide a uniform rule of taxation, except on property paying specific taxes. *The People* v. *The Auditor General*, 7 Michigan, 84; *Board of Supervisors* v. *Auditor General*, 65 Michigan, 408; *National Loan &c.*

Co. v. *City of Detroit*, 136 Michigan, 451. The power of exemption would seem to imply the power of discrimination, and in taxation, as in other matters of legislation, classification is within the competency of the legislature. We said in *American Sugar Refining Co.* v. *Louisiana*, 179 U. S. 89, 92, that from time out of mind it has been the policy of this Government to classify for the purpose of taxation, and a discrimination was supported between taxation of producers and manufacturers of products; and yet in *Billings* v. *Illinois*, 188 U. S. 97, 102, we compared the rule with that in *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, where a distinction between buyers of products and the producers of them was held an illegal discrimination.

It may, therefore, be said that in taxation there is a broader power of classification than in some other exercises of legislation. There is certainly as great a power, and the rule appellant urges cannot be adopted. It is inconsistent with the principle of classification and the cases which have explained the principle and the range of its legal exercise.

In *Bell's Gap Railroad Co.* v. *Pennsylvania*, 134 U. S. 232, 237, it was decided that under the power of classification there might be exemption of property dependent upon its species and the rates of excise might be varied upon different trades and products. And it was said that it was safe to say "that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation." It was pointed out that to give it that effect would destroy the constitutional provision and laws of some of the States which, while enjoining uniformity of taxation, permitted exceptions which were deemed material, and that "it would render nugatory those discriminations which the best interests of society require; which are necessary for the encouragement of needed and useful industries, and the discouragement of intemperance and

vice; and which every State, in one form or another, deems it expedient to adopt."

In *Pacific Express Company* v. *Seibert*, 142 U. S. 339, a distinction, for taxing purposes, between express companies which owned their own means of transportation and those who engaged for hire a railroad or steamship company to transport their merchandise, was supported. The range of classification for taxing purposes which was expressed in *Bell's Gap Railroad Company* v. *Pennsylvania* and *Home Insurance Co.* v. *New York*, 134 U. S. 594, 606, 607, was approved. These cases and others were cited in *Michigan Central Railroad Company* v. *Powers*, 201 U. S. 245, 293, for the same principle of classification and its application to taxation. It was said, "There is no general supervision on the part of the Nation over state taxation, and in respect to the latter the State has, speaking generally, the freedom of a sovereign both as to objects and immunities. And, further, quoting from the opinion of the lower court, it was said, "It is enough that there is no discrimination in favor of one against another of the same class, and the method for the assessment and collection of the tax is not inconsistent with natural justice."

In *Travelers' Insurance Co.* v. *Connecticut*, 185 U. S. 364, a law of the State was sustained which imposed a tax on the stock of non-residents in corporations and exempted the stock of residents.

In *King* v. *Mullins*, 171 U. S. 404, 435, a distinction was made in the taxing system of the State between tracts of 1000 acres or less and tracts of more than 1000 acres. It was sustained.

In *Consolidated Coal Co.* v. *Illinois*, 185 U. S. 203, a law providing for the inspection of mines was held not unconstitutional by reason of its limitation to mines where more than five men were employed at any one time. See also *McLean* v. *Arkansas*, 211 U. S. 539.

In *New York, N. H. & H. R. R. Co.* v. *New York*, 165

U. S. 628, a law requiring railroads to heat their passenger coaches but exempting roads of less than fifty miles in length was declared not unconstitutional and discriminatory. To like effect is *Dow* v. *Beidelman*, 125 U. S. 680, where a classification of railroads by their length in fixing the rate of passengers' fare was sustained.

In *Postal Telegraph Cable Co.* v. *Adams*, 155 U. S. 688, a tax was graduated according to the amount and value of the property measured by miles, and was in lieu of taxes levied directly on the property. Held valid. In *Magoun* v. *Illinois Trust & Savings Bank*, 170 U. S. 283, legacies less than a certain amount were held legally exempt from taxation.

To these cases may be added others. They illustrate the power of the legislature of the State over the subjects of taxation and the range of discrimination which may be exercised in classifying those subjects when not obviously exercised in a spirit of prejudice and favoritism. *Cook* v. *Marshall County*, 196 U. S. 261, 274; *Missouri* v. *Dockery*, 191 U. S. 165. The cases decided subsequent to the decision in *Bell's Gap Railroad Co.* v. *Pennsylvania*, have applied its principle to many varying instances. Granting the power of classification, we must grant Government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. *Keeney* v. *New York*, 222 U. S. 525, 536. The State is not bound by any rigid equality. This is the rule;—its limitation is that it must not be exercised in "clear and hostile discriminations between particular persons and classes." See 223 U. S. 59, 62, 63. Thus defined and thus limited, it is a vital principle, giving to the Government freedom to meet its exigencies, not binding its action by rigid formulas but apportioning its burdens and permitting it to make those "discriminations which the best interests of society require."

We think the statute under review is within the rule.

It is not arbitrary. It has a reasonable basis, resting on a real distinction. It is not a distinction based on mere size only, as contended by appellant, nor upon the mere amount of business done. There is a difference in the doing of the business and its results; a difference in the relation to the public. Indeed, the non-taxed companies, are subsidiary to the taxed companies, patrons, in a sense, of the taxed companies. The use of the untaxed property, as pointed out by the District Court, is "predominantly private, while the use of the taxed property is correspondingly public; the exempt property is used for the personal convenience of the owners, while the taxed property represents commercial investment for profit making purposes." To these differences the court added others: "(1) That the property exempted is only a trifling portion of the whole; (2) that the cost of assessing and collecting in this class would be disproportionate to the amount which would be realized; (3) that this property is in the incipient or development stage, while the taxed property is in the fully developed form." All were differences which could appeal to the legislature and determine a difference of treatment. To accomplish it they had to be united in a class, and, as happily said by Judge Denison in the Circuit Court, the companies were described "in terms of earnings instead of in terms of method and use." It seems, however, that by the selection of earnings as a basis of classification all of the differences we have enumerated are not exactly accommodated. Some small portion of the coöperative companies will be taxed and some small portion of the profit-making companies will be exempt. This result is not, we think, an impeachment of the basis of classification, as the cases we have cited illustrate. Besides, the appellant is not affected by the inexactitude.

The second question in the case is whether the purpose of act No. 49, of 1909, under which the appellant was

assessed, is sufficiently expressed in its title. Prior to the passage of that act certain specified classes of corporations, such as railroad, express companies, etc., were taxed under the provisions of act No. 282 of the acts of 1905, *supra*.

The title of act No. 49 and § 1 are as follows:

"An act to amend the title and certain sections of Act No. 173 of 1901 relating to the taxation of railroads and express companies.

"Section 1. The title and sections 1, 4, 5, 6, 8, 9, 10, 13, 14, 18 and 21 of Act No. 282 of the Public Acts of 1905, entitled 'An Act to provide for the assessment of the property of railroad companies, union station and depot companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies, and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act,' are hereby amended to read as follows:

"'TITLE. An act to provide for the assessment of the property, by whomsoever owned, operated or conducted, of railroad companies, union station and depot companies, telegraph companies, telephone companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight companies, and all other companies owning, leasing, running or operating any freight, stock, refrigerator, or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this Act, over or upon the line or lines of any railroad or railroads in this State, and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes, and to repeal all acts or parts of acts contravening any of the provisions of this act.'"

The contention is that there is nothing in the title to indicate the intention of adding to the act of 1905 "new classes of business to those already taxed by the *ad valorem* method, so as to include telephone companies." It is hence further contended that the act is invalid, the constitution of the State providing that "no law shall embrace more than one object, which shall be expressed in its title."

There can be no doubt that the purpose of the act was to extend to telegraph and telephone companies the provisions of the act of 1905, which provided for the assessment of the property of certain companies and the levying of taxes thereon by the State Board of Assessors, and the method of collecting such taxes. Its title explicitly states that the purpose is to amend the title and the *act* relating to the taxation of railroad and express companies and the particular sections which consummate the purpose are referred to and declared in § 1 to be amended. The title, therefore, is a substantial compliance with the constitution of the State, and the brief of appellee shows thirty-eight examples of like kind in the laws of the State. This legislative and executive construction is entitled to weight, and, when considered in connection with the consequence of making those laws invalid as well as declaring the law under review invalid, would determine against the construction urged by appellant even if we had doubt of the sufficiency of the title to give notice of the purpose of the legislation. See *Attorney General* v. *Amos*, 60 Michigan, 372; *Grimm* v. *Secretary of State*, 137 Michigan, 134; *Common Council of Detroit* v. *Schmid*, 128 Michigan, 379; *People* v. *Howard*, 73 Michigan, 10; *City of Detroit* v. *Chapin*, 108 Michigan, 136.

Decree affirmed.

CITIZENS' TELEPHONE COMPANY OF JACKSON *v.* FULLER, AUDITOR GENERAL OF THE STATE OF MICHIGAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

No. 285. Argued May 2, 1913.—Decided June 10, 1913.

Decided on authority of preceding case.

THE facts are stated in the opinion.

Mr. Thomas P. Bradfield and *Mr. Jacob Kleinhans* for appellant submitted.

Mr. Roger I. Wykes, with whom *Mr. Grant Fellows* was on the brief, for appellee.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Appellant is a telephone company, located at the City of Jackson, State of Michigan, doing an extensive business. It brought this bill in equity to restrain the collection of a tax levied under the laws considered in the preceding case, *Citizens' Telephone Co.* v. *Fuller, ante*, p. 322. It is substantially like the bill in the latter case.

A demurrer was filed to the bill and, being overruled, an answer was filed. After hearing, a decree was entered dismissing the bill. This appeal was then taken.

The questions presented are the same as those presented in the preceding case and were submitted at the same time and on the same argument. On the authority of the opinion in that case the decree is

Affirmed.